राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 24 अगस्त, 2022 / 02 भाद्रपद, 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated 04th July, 2022

No. Shram (A) 3-8/2021 (Awards) L.C. Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award / Order
1.	Ref. 237/2020	Sh. Said Mohammad	M/s Swastika Printing & Packaging	04-05-2022
2.	Ref. 246/2020	Sh. Nasir Ali	M/s Swastika Printing & Packaging	04-05-2022
3.	Ref. 247/2020	Sh. Rajesh Kumar	M/s Swastika Printing & Packaging	04-05-2022
4.	Ref. 248/2020	Smt. Jaswinder Kaur	M/s Swastika Printing & Packaging	04-05-2022
5.	Ref. 249/2020	Sh. Ravi Kumar	M/s Swastika Printing & Packaging	04-05-2022
6.	Ref. 250/2020	Sh. Ishwar Sharma	M/s Swastika Printing & Packaging	04-05-2022
7.	Ref. 37/2020	Sh. Deep Chand	M/s Krishna Udyog	05-05-2022
8.	Ref. 38/2020	Sh. Malkeet Singh	M/s Krishna Udyog	05-05-2022
9.	Ref. 39/2020	Sh. Manjeet	M/s Krishna Udyog	05-05-2022
10.	Ref. 54/2020	Sh. Jeet Ram	The D.F.O. Kunihar, Solan	06-05-2022
11.	Ref. 103/2021	Sh. Puran Chand	M/s Raju Sagar Enterprises	06-05-2022
12.	Ref. 104/2021	Smt. Sita Devi	M/s Raju Sagar Enterprises	06-05-2022
13.	Ref. 150/2022	Sh. Sushil Kumar	Auro Weaving Mills	07-05-2022
14.	Ref. 163/2020	Sh. Anil Kumar	Renit Power (P) Ltd.	07-05-2022
15.	App. 37/2018	Sh. Shankar Lal	President Gramin Shikshit Berozar.	11-05-2022
16.	Ref. 169/2017	Sh. Subhash Singh	Tata Global Beverages Ltd.	11-05-2022
17.	Ref. 105/2016	Sh. Jai Chand	M/s Venus Remedies	11-05-2022
18.	App. 152/2017	Sh. Sunil Kumar	Milestone Gear (P) Ltd.	11-05-2022
19.	Ref. 85/2018	Sh Hitesh Kaushik	M.D. Shri Ram Hospital New Shimla.	11-05-2022
20.	App. 74/2018	Sh. Tara Chand	M/s Ultra Tech.	11-05-2022
21.	App. 75/2018	Sh. Shukra Malik	M/s Ultra Tech.	11-05-2022
22.	App. 76/2018	Sh. Jagdish Chander	M/s Ultra Tech.	11-05-2022
23.	App. 77/2018	Sh. Pawan Vijay	M/s Ultra Tech.	11-05-2022
24.	App. 83/2018	Sh. Vinod Kumar	M/s Ultra Tech	11-05-2022
25.	App. 84/2018	Sh. Ajay Kumar	M/s Ultra Tech.	11-05-2022
26.	App. 85/2018	Sh. Sunil Dutt	M/s Ultra Tech.	11-05-2022
27.	App. 86/2018	Sh. Nardev Singh	M/s Ultra Tech.	11-05-2022
28	App. 152/2019	Sujata Rani	Ind Swift Ltd.	11-05-2022
29.	App. 153/2019	Meera Devi	Ind Swift Ltd.	11-05-2022
30.	App. 154/2019	Sarita Rawat	Ind Swift Ltd.	11-05-2022
31.	App. 155/2019	Birbal Kumar	Ind Swift Ltd.	11-05-2022

32.	Ref. 191/2017	Sh. Vivek Sharma	Zamil Air Conditioner India (P) Ltd.	18-05-2022
33.	Ref. 31/2016	Sh. Kapil Dev	Twilight Litaka Pharma.	18-05-2022
34.	Ref. 44/2014	Sh. Rakesh Singh	Drish Shoes Ltd.	18-05-2022

By order,

R.D. DHIMAN.
Addl. Chief Secretary (Lab. & Emp.).

Said Mohd. Vs. M/s Swastika Printing and Packaging, Kala Amb

Reference No. 237 of 2020

30-4-2022
Present: Shri Prateek Kumar, Advocate for the petitioner
Shri Nav Rattan Dev, Advocate for respondent

For today, this case is listed for ex-parte evidence of the petitioner but Shri Nav Rattan Dev, Advocate for the respondent has appeared alongwith Shri Narender Gupta, Partner of the respondent company and stated that they are ready to settle the dispute with the petitioner. To this effect the statements of the parties recorded separately and placed on record. List the case for further orders on 4-5-2022 at Shimla.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla,
Camp at Nahan.

4-5-2022
Present: Shri Prateek Kumar, Advocate for the petitioner
Shri Harish Negi, Advocate vice csl. for respondent

Heard. Record perused

Vide notification dated 16.9.2020, the appropriate government has sent the present reference to this Court qua the termination of the services of Shri Said Mohd. S/o Shri Nawab Ali by the respondenti.eThe Occupier, M/s Swastika Printing and Packaging, Kala Amb *w.e.f.* 23.3.2020 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the petitioner to be illegal and unjustified. On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 237 of 2020. It is particular to point out here that the said reference stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Narender Gupta, Partner of the respondent company that as per settlement the respondent company is ready and willing to make a lump-sum compensation of ₹ 35,000/- through cheque No. 000057 dated 10.5.2022 to the petitioner in lieu of his full & final

settlement and now nothing is due in favour of the petitioner. To this effect, his statement recorded separately. On the other hand,the petitioner *vide* separate statement has stated at bar that as per the settlement the respondent company has paid ₹ 35,000/- through cheque No. 000057 dated 10.5.2022, which he has received today in the Court and now nothing is due from the respondent company. The lump-sum compensation is including the amount of gratuity.

In view of the aforesaid statement of the parties, I am satisfied that a lawful compromise has been effected between the parties and the petitioner has received a cheque no. 000057 dated 10.5.2022 amounting to ₹ 35,000/- (₹ Thirty Five Thousand only) from the respondent today in the Court which includes the amount of his gratuity and now nothing is due from the respondent company.

Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated.** The reference is answered accordingly and the award is passed as per the statements of both the parties and copy of cheque Mark P-1which shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
4.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Nasir Ali Vs. M/s Swastika Printing and Packaging, Kala Amb.

Reference No. 246 of 2020

30.4.2022
Present: Shri Prateek Kumar, Advocate for the petitioner
Shri Nav Rattan Dev, Advocate for respondent

For today, this case is listed for *ex-parte* evidence of the petitioner but Shri Nav Rattan Dev, Advocate for the respondent has appeared along with Shri Narender Gupta, Partner of the respondent company and stated that they are ready to settle the dispute with the petitioner. To this effect the statements of the parties recorded separately and placed on record. List the case for further orders on 4.5.2022 at Shimla.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla,
Camp at Nahan.

4.5.2022
Present: Shri Prateek Kumar, Advocate for the petitioner
Shri Harish Negi, Advocate vice csl. for respondent

Heard. Record perused

Vide notification dated 16.9.2020, the appropriate government has sent the present reference to this Court qua the termination of the services of Shri Nasir Ali s/o Shri Suleman by the respondent *i.e.* The Occupier, M/s Swastika Printing and Packaging, Kala Amb *w.e.f.* 23.3.2020 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the petitioner to be illegal and unjustified. On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 246 of 2020. It is particular to point out here that the said reference stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Narender Gupta, Partner of the respondent company that as per settlement the respondent company is ready and willing to make a lump sum compensation of ₹95,000/- through cheque No. 000054 dated 10.5.2022 to the petitioner in lieu of his full & final settlement and now nothing is due in favour of the petitioner. To this effect, his statement recorded separately. On the other hand,the petitioner *vide* separate statement has stated at bar that as per the settlement the respondent company has paid ₹ 95,000/- through cheque No. 000054 dated 10.5.2022, which he has received today in the Court and now nothing is due from the respondent company. The lump-sum compensation is including the amount of gratuity.

In view of the aforesaid statement of the parties, I am satisfied that a lawful compromise has been effected between the parties and the petitioner has received a cheque No. 000054 dated 10.5.2022 amounting to ₹ 95,000/- (₹ Ninety Five Thousand only) from the respondent today in the Court which includes the amount of his gratuity and now nothing is due from the respondent company.

Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated.** The reference is answered accordingly and the award is passed as per the statements of both the parties and copy of cheque Mark P-1which shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
4.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Rajesh Kumar Vs. M/s Swastika Printing and Packaging, Kala Amb.

Reference No. 247 of 2020

30.4.2022
Present: Shri Prateek Kumar, Advocate for the petitioner
Shri Nav Rattan Dev, Advocate for respondent

For today, this case is listed for ex-parte evidence of the petitioner but Shri Nav Rattan Dev, Advocate for the respondent has appeared along with Shri Narender Gupta, Partner of the respondent company and stated that they are ready to settle the dispute with the petitioner. To this effect the statements of the parties recorded separately and placed on record. List the case for further orders on 4.5.2022 at Shimla.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla,
Camp at Nahan.

4.5.2022
Present: Shri Prateek Kumar, Advocate for the petitioner
Shri Harish Negi, Advocate vice csl. for respondent

Heard. Record perused

Vide notification dated 16.9.2020, the appropriate government has sent the present reference to this Court qua the termination of the services of Shri Rajesh Kumar S/o Shri Raghu Ram by the respondent *i.e.* The Occupier, M/s Swastika Printing and Packaging, Kala Amb *w.e.f.* 23.3.2020 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the petitioner to be illegal and unjustified. On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 247 of 2020. It is particular to point out here that the said reference stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Narender Gupta, Partner of the respondent company that as per settlement the respondent company is ready and willing to make a lump-sum compensation of ₹ 99,000/- through cheque No. 000055 dated 10.5.2022 to the petitioner in lieu of his full & final settlement and now nothing is due in favour of the petitioner. To this effect, his statement recorded separately. On the other hand,the petitioner *vide* separate statement has stated at bar that as per the settlement the respondent company has paid ₹99,000/- through cheque No. 000055 dated 10.5.2022, which he has received today in the Court and now nothing is due from the respondent company. The lump-sum compensation is including the amount of gratuity.

In view of the aforesaid statement of the parties, I am satisfied that a lawful compromise has been effected between the parties and the petitioner has received a cheque No. 000055 dated 10.5.2022 amounting to ₹ 99,000/- (₹ Ninety Nine Thousand only) from the respondent today in the Court which includes the amount of his gratuity and now nothing is due from the respondent company.

Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated.** The reference is answered accordingly and the award is passed as per the statements of both the parties and copy of cheque Mark P-1which shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
4.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Jaswinder Kaur Vs. M/s Swastika Printing and Packaging, Kala Amb

Reference No. 248 of 2020

30.4.2022
Present: Shri Prateek Kumar, Advocate for the petitioner
Shri Nav Rattan Dev, Advocate for respondent

For today, this case is listed for ex-parte evidence of the petitioner but Shri Nav Rattan Dev, Advocate for the respondent has appeared along with Shri Narender Gupta, Partner of the respondent company and stated that they are ready to settle the dispute with the petitioner. To this effect the statements of the parties recorded separately and placed on record. List the case for further orders on 4.5.2022 at Shimla.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla,
Camp at Nahan.

4.5.2022
Present: Shri Prateek Kumar, Advocate for the petitioner
Shri Harish Negi, Advocate vice csl. for respondent

Heard. Record perused

Vide notification dated 16.9.2020, the appropriate government has sent the present reference to this Court qua the termination of the services of Smt. Jaswinder Kaur w/o Shri Ravi Kumar by the respondent *i.e.* The Occupier, M/s Swastika Printing and Packaging, Kala Amb *w.e.f.* 23.3.2020 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the petitioner to be illegal and unjustified. On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 248 of 2020. It is particular to point out here that the said reference stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Narender Gupta, Partner of the respondent company that as per settlement the respondent company is ready and willing to make a lump sum compensation of ₹35,000/- through cheque No. 000059 dated 10.5.2022 to the petitioner in lieu of her full & final settlement and now nothing is due in favour of the petitioner. To this effect, his statement recorded separately. On the other hand,the petitioner *vide* separate statement has stated at bar that as per the settlement the respondent company has paid ₹ 35,000/- through cheque No. 000059 dated 10.5.2022, which she has received today in the Court and now nothing is due from the respondent company. The lump-sum compensation is including the amount of gratuity.

In view of the aforesaid statement of the parties, I am satisfied that a lawful compromise has been effected between the parties and the petitioner has received a cheque No. 000059 dated 10.5.2022 amounting to ₹ 35,000/- (₹ Thirty Five Thousand only) from the respondent today in the Court which includes the amount of her gratuity and now nothing is due from the respondent company.

Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently,**

the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated. The reference is answered accordingly and the award is passed as per the statements of both the parties and copy of cheque Mark P-1which shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
4.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla,

Ravi Kumar Vs. M/s Swastika Printing and Packaging, Kala Amb

Reference No. 249 of 2020

30.4.2022
Present: Shri Prateek Kumar, Advocate for the petitioner
Shri Nav Rattan Dev, Advocate for respondent

For today, this case is listed for ex-parte evidence of the petitioner but Shri Nav Rattan Dev, Advocate for the respondent has appeared alongwith Shri Narender Gupta, Partner of the respondent company and stated that they are ready to settle the dispute with the petitioner. To this effect the statements of the parties recorded separately and placed on record. List the case for further orders on 4.5.2022 at Shimla.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla,
Camp at Nahan.

4.5.2022
Present: Shri Prateek Kumar, Advocate for the petitioner
Shri Harish Negi, Advocate vice csl. for respondent

Heard. Record perused

Vide notification dated 16.9.2020, the appropriate government has sent the present reference to this Court qua the termination of the services of Shri Ravi Kumar s/o Shri UtwariLal by the respondenti.eThe Occupier, M/s Swastika Printing and Packaging, Kala Amb *w.e.f.* 23.3.2020 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the petitioner to be illegal and unjustified. On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 249 of 2020. It is particular to point out here that the said reference stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Narender Gupta, Partner of the respondent company that as per

settlement the respondent company is ready and willing to make a lump-sum compensation of ₹ 25,000/- through cheque No. 000058 dated 10.5.2022 to the petitioner in lieu of his full & final settlement and now nothing is due in favour of the petitioner. To this effect, his statement recorded separately. On the other hand,the petitioner *vide* separate statement has stated at bar that as per the settlement the respondent company has paid ₹ 25,000/- through cheque No. 000058 dated 10.5.2022, which he has received today in the Court and now nothing is due from the respondent company. The lump sum compensation is including the amount of gratuity.'

In view of the aforesaid statement of the parties, I am satisfied that a lawful compromise has been effected between the parties and the petitioner has received a cheque no. 000058 dated 10.5.2022 amounting to ₹ 25,000/- (₹ Twenty Five Thousand only) from the respondent today in the Court which includes the amount of his gratuity and now nothing is due from the respondent company.

Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated.** The reference is answered accordingly and the award is passed as per the statements of both the parties and copy of cheque Mark P-1which shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
4.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Ishwar SharmaVs. M/s. Swastika Printing and Packaging, Kala Amb

Reference No. 250 of 2020

30.4.2022
Present: Shri Prateek Kumar, Advocate for the petitioner
Shri Nav Rattan Dev, Advocate for respondent

For today, this case is listed for ex-parte evidence of the petitioner but Shri Nav Rattan Dev, Advocate for the respondent has appeared alongwith Shri Narender Gupta, Partner of the respondent company and stated that they are ready to settle the dispute with the petitioner. To this effect the statements of the parties recorded separately and placed on record. List the case for further orders on 4.5.2022 at Shimla.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla,
Camp at Nahan.

4.5.2022
Present: Shri Prateek Kumar, Advocate for the petitioner

Shri Harish Negi, Advocate vice csl. for respondent

Heard. Record perused

Vide notification dated 16.9.2020, the appropriate government has sent the present reference to this Court qua the termination of the services of Shri Ishwar Sharma s/o Shri MadanLal by the respondent *i.e.* The Occupier, M/s Swastika Printing and Packaging, Kala Amb *w.e.f.* 23.3.2020 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the petitioner to be illegal and unjustified. On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 250 of 2020. It is particular to point out here that the said reference stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Narender Gupta, Partner of the respondent company that as per settlement the respondent company is ready and willing to make a lump-sum compensation of ₹ 95,000/- through cheque No. 000053 dated 10.5.2022 to the petitioner in lieu of his full & final settlement and now nothing is due in favour of the petitioner. To this effect, his statement recorded separately. On the other hand,the petitioner *vide* separate statement has stated at bar that as per the settlement the respondent company has paid ₹95,000/- through cheque No. 000053 dated 10.5.2022, which he has received today in the Court and now nothing is due from the respondent company. The lump-sum compensation is including the amount of gratuity.

In view of the aforesaid statement of the parties, I am satisfied that a lawful compromise has been effected between the parties and the petitioner has received a cheque No. 000053 dated 10.5.2022 amounting to ₹ 95,000/- (₹ Ninety Five Thousand only) from the respondent today in the Court which includes the amount of his gratuity and now nothing is due from the respondent company.

Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated.** The reference is answered accordingly and the award is passed as per the statements of both the parties and copy of cheque Mark P-1which shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
4.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 37 of 2020
Instituted on : 2.3.2020
Decided on : 5.5.2022

Deep Chand s/o Shri Balwant Singh, r/o VPO Kollar, Tehsil Paonta Sahib, District Sirmaur, H.P. ...*Petitioner.*

VERSUS

The Factory Manager M/s Krishna Udyog, Village Rampur Banjaran, P.P Dhaula Kaun, District Sirmaur, H.P. ...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : None
For the Respondent : Ex-parte

AWARD

Vide notification dated 20.2.2020, the appropriate government has sent the following reference to this Court for legal adjudication:

"Whether termination of services of Shri Deep Chand s/o Shri Balwant Singh r/o VPO Kollar, Tehsil Paonta Sahib, District Sirmaur, H.P. during July, 2018 by the Factory Manager M/s Krishna Udyog, Village Rampur Banjaran, P.O. Dhaula Kaun, District Sirmaur, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"

On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 37 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of parties since 2.3.2020 but none had appeared.

The respondent was duly served but none has appeared on its behalf hence, the respondent *vide* order dated 18.3.2021 was proceeded against ex-parte. The notices issued to petitioner through affixation on the address given in reference notification itself, has been received back with the report that there is no such person residing at Village Kollar. Therefore, I have left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

As per the reference the petitioner has alleged his termination *w.e.f.* July, 2018 to be illegal and unjustified but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent without complying with the provisions of the Industrial Dispute Act, 1947, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence *i.e.* oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, in the absence of any claim petition/ evidence on record, the reference is answered in negative against the petitioner and award is passed accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
5.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number	:	38 of 2020
Instituted on	:	2.3.2020
Decided on	:	5.5.2022

Malkeet Singh s/o Shri Suresh Kumar, r/o VPO Kollar, Tehsil Paonta Sahib, District Sirmaur, H.P. ...*Petitioner.*

VERSUS

The Factory Manager, M/s Krishna Udyog, Village Rampur Banjaran, P.O. Dhaula Kaun, District Sirmaur, H.P. ...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	None
For the Respondent	:	Ex-parte

AWARD

Vide notification dated 22.2.2020, the appropriate government has sent the following reference to this Court for legal adjudication:

> **"Whether termination of services of Shri Malkeet Singh s/o Shri Suresh Kumar r/o VPO Kollar, Tehsil Paonta Sahib, District Sirmaur, H.P. during September, 2018 by the Factory Manager M/s Krishna Udyog, Village Rampur Banjaran, P.O. Dhaula Kaun, District Sirmour, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"**

On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 38 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of parties since 2.3.2020 but none had appeared.

The respondent was duly served but none has appeared on its behalf hence, the respondent *vide* order dated 18.3.2021 was proceeded against ex-parte. The notices issued to petitioner through affixation on the address given in reference notification itself, has been received back with the report that there is no such person residing at Village Kollar. Therefore, I have left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

As per the reference the petitioner has alleged his termination *w.e.f.* September, 2018 to be illegal and unjustified but, the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent without complying with the provisions of the Industrial Dispute Act, 1947, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence *i.e.* oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, in the absence of any claim petition/ evidence on record, the reference is answered in negative against the petitioner and award is passed accordingly.Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
5.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number	:	39 of 2020
Instituted on	:	2.3.2020
Decided on	:	5.5.2022

Manjeet s/o Shri Sobha Ram r/o VPO Kollar, Tehsil Paonta Sahib, District Sirmaur, H.P.
…Petitioner .

VERSUS

The Factory Manager, M/s Krishna Udyog, Village Rampur Banjaran, P.O. Dhaula Kaun, District Sirmaur, H.P. *...Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	None.
For the Respondent	:	Ex-parte.

AWARD

Vide notification dated 20.2.2020, the appropriate government has sent the following reference to this Court for legal adjudication:

"Whether termination of services of Shri Manjeet s/o Shri Sobha Ram, r/o VPO Kollar, Tehsil Paonta Sahib, District Sirmour, H.P. during September, 2018 by the

Factory Manager, M/s Krishna Udyog, Village Rampur Banjaran, P.O Dhaula Kaun, District Sirmaur, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"

On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 39 of 2020 and accordingly, notices were issued to both the parties. This case is being listed for the service of parties since 2.3.2020 but none had appeared.

The respondent was duly served but none has appeared on its behalf hence, the respondent *vide* order dated 18.3.2021 was proceeded against ex-parte. The notices issued to petitioner through affixation on the address given in reference notification itself, has been received back with the report that there is no such person residing at Village Kollar. Therefore, I have left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

As per the reference the petitioner has alleged his termination *w.e.f.* September, 2018 to be illegal and unjustified but , the petitioner has failed to appear before this Court despite having been the knowledge of the present dispute. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent without complying with the provisions of the Industrial Dispute Act, 1947, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence *i.e* oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, in the absence of any claim petition/ evidence on record, the reference is answered in negative against the petitioner and award is passed accordingly.Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
5.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number	:	54 of 2020
Instituted on	:	9.3.2020
Decided on	:	6.5.2022

Jeet Ram s/o Shri Ram Dass, r/o Village Manshi, P.O. Badalag, Tehsil Kasauli, District Solan, H.P. ...*Petitioner.*

Versus

The Divisional Forest Officer, Kunihar, Forest Division Kunihar, District Solan, H.P.
...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri J.C. Bhardwaj, AR
For the Respondent : Shri Kapil Mohan Gautam, Dy. DA

AWARD

Vide notification dated 4.3.2020, the appropriate government has sent the following reference to this Court for legal adjudication:

"Whether termination of services of Jeet Ram s/o Shri Ram Dass r/o Village Manshi, P.O Badalag, Tehsil Kasauli, District Solan, H.P. by the Divisional Forest Officer, Kunihar, Forest Division Kunihar, District solan, H.P. w.e.f. 2.5.2017, without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what relief including reinstatement, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 54 of 2020 and accordingly, notices were issued to both the parties. Shri J.C. Bhardwaj, AR for the petitioner has stated at bar that he has received no instructions on behalf of the petitioner to appear in this Court as the petitioner does not want to pursue this reference petition. To this effect his statement recorded separately. Therefore, keeping in view the statement of Shri J.C. Bhardwaj, AR for the petitioner, I have left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

As per the reference the petitioner has alleged his termination *w.e.f.* 2.5.2017 to be illegal and unjustified but, since the petitioner is not interested to pursue the present reference the same is answered in negative against the petitioner and award is passed accordingly.Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
6.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number : 103 of 2021
Instituted on : 5.5.2021
Decided on : 6.5.2022

Puran Chand s/o Shri Chuni Lal, r/o VPO Kotlapanjola, Tehsil Pachhad, District Sirmaur, (H.P.) ...*Petitioner.*

VERSUS

The Occupier M/s Raju Sagar Enterprises, Village Dilman Baksar, Tehsil Pachhad, District Sirmaur, H.P. ...*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : None
For the Respondent : None

AWARD

Vide notification dated 27.3.2021, the appropriate government has sent the following reference to this Court for legal adjudication:

> **"Whether termination of services of Shri Puran Chand s/o Shri Chuni Lal, r/o VPO Kotlapanjola, Tehsil Pachhad, District Sirmaur, H.P. by the Occupier M/s Raju Sagar Enterprises, Village Dilman Baksar, Tehsil Pachhad, District Sirmaur, H.P. during the month of April, 2020 when factory restarted after COVID-19 is lockdown, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"**

On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 103 of 2021 and accordingly, notices were issued to both the parties. This case is being listed for the service of parties since 5.5.2021 but none had appeared. It is particular to mention here that the notices have been delivered to the parties as per the report made by the office in the marzin of zimini orders dated 19.10.2021 but no one is appearing on behalf of the parties. In the interest of justice, the parties were again issued notices to appear before this Court and the petitioner had appeared before this Court on 17.3.2022. Thereafter, the case was listed for 8.4.2022 on which date neither the petitioner nor his counsel appeared before this Court and the presence of the parties were marked as none appeared. Again this Court issued the fresh notice but despite the service, none is appearing for the parties. Therefore, I have left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

As per the reference the petitioner has alleged his termination during April, 2020 to be illegal and unjustified but, the petitioner has failed to appear before this Court despite having been served. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that his services have been illegally terminated by the respondent without complying with the provisions of the Industrial Dispute Act, 1947, it appears that the petitioner is not interested to pursue his case. The petitioner has miserably failed to prove on record by leading any kind of evidence *i.e* oral or documentary to prove or substantiate his plea of illegal termination by not filing any claim petition before this Court or putting his appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, in the absence of any claim petition/ evidence on record, the reference is answered in negative against the petitioner and

award is passed accordingly.Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
6.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number	:	104 of 2021
Instituted on	:	5.5.2021
Decided on	:	6.5.2022

Sita Devi w/o Shri Puran Chand, r/o VPO Kotlapanjola, Tehsil Pachhad, District Sirmaur, (H.P.) *...Petitioner.*

VERSUS

The Occupier M/s Raju Sagar Enterprises, Village Dilman Baksar, Tehsil Pachhad, District Sirmaur, H.P. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	None
For the Respondent	:	None

AWARD

Vide notification dated 27.3.2021, the appropriate government has sent the following reference to this Court for legal adjudication:

> **"Whether termination of services of Smt. Sita Devi w/o Shri Puran Chand r/o VPO Kotlapanjola, Tehsil Pachhad, District Sirmaur, H.P. by the Occupier M/s Raju Sagar Enterprises, Village Dilman Baksar, Tehsil Pachhad, District Sirmaur, H.P. during the month of April, 2020 when factory restarted after COVID-19 is lockdown, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"**

On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 104 of 2021 and accordingly, notices were issued to both the parties. This case is being listed for the service of parties since 5.5.2021 but none had appeared. It is particular to mention here that the notices have been delivered to the parties as per the report

made by the office in the marzin of zimini orders dated 19.10.2021 but no one is appearing on behalf of the parties. In the interest of justice, the parties were again issued notices to appear before this Court and the petitioner had appeared before this Court on 17.3.2022. Thereafter, the case was listed for 8.4.2022 on which date neither the petitioner nor her counsel appeared before this Court and the presence of the parties were marked as none appeared. Again this Court issued the fresh notice but despite the service, none is appearing for the parties. Therefore, I have left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

As per the reference the petitioner has alleged her termination during April, 2020 to be illegal and unjustified but, the petitioner has failed to appear before this Court despite having been served. Since, the petitioner has failed to appear before this Court and to file any claim in support thereof and to lead evidence in order to show that her services have been illegally terminated by the respondent without complying with the provisions of the Industrial Dispute Act, 1947, it appears that the petitioner is not interested to pursue her case. The petitioner has miserably failed to prove on record by leading any kind of evidence *i.e* oral or documentary to prove or substantiate her plea of illegal termination by not filing any claim petition before this Court or putting her appearance before the Court in order to establish that the termination of the petitioner from service is in violation of mandatory provisions of the Industrial Disputes Act. Hence, in the absence of any claim petition/ evidence on record, the reference is answered in negative against the petitioner and award is passed accordingly.Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
6.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Sushil Kumar Vs. Auro Weaving Mills, Baddi

Reference No. 150 of 2022

7.5.2022
Present: Petitioner in person.
Shri Rajat Sharma, Advocate for respondent.

Heard. Record perused

Vide notification dated 9.3.2022, the appropriate government has sent the present reference to this Court qua the demand raised by Shri Sushil Kumar s/o Shri Ramvishwas for his reinstatement before the respondenti.eThe Occupier/ Factory Manager, M/s Auro Weaving Mills to be illegal and unjustified. On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 150 of 2022. It is particular to point out here that the said reference stood amicably resolved by way of an amicable settlement. It has been stated at the bar by Shri Sushil Kumar petitionerthat the industrial dispute raised by him which was sent through reference to this Court by the appropriate government stood amicably settled between the

parties. As per the amicable resolution took place between the parties, the terms and conditions were reduced into writing as per settlement (PA). He has also placed on record the salary slip (PB), copy of aadhar card (PC), copy of identity card (PD), aadhar card of Factory Manager of respondent company (PE) and identity card of Factory Manager (PF). He has also stated that as per the settlement deed, his services have been reengaged by the respondent company and consequently he do not intend to pursue further with the present reference and the same may be decided accordingly. To this effect his statement recorded separately. *Vide* separate statement Shri Jasbir Singh, Factory Manager of respondent company has stated that the industrial dispute between the parties stood amicably resolved by way of amicable settlement (PA) and the services of the petitioner have been reengaged as such nothing survive in the present reference which may kindly be decided accordingly.

In view of the aforesaid statement of the parties, I am satisfied that a lawful compromise has been effected between the parties as per settlement (PA) and now nothing is due from the respondent company.

Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settledbetween the parties.** The reference is answered accordingly and the award is passed as per the statements of both the parties and copy of settlement (PA), pay slip (PB), copy of Aadhar card of the petitioner (PC), copy of identity card of petitioner (PD), copy of Aadhar card of Jasbir Singh (PE) and copy of identity card of Jasbir Singh (PF) shall form part and parcel of this award. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
7.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA.**

Reference Number	:	163 of 2020
Instituted on	:	14.8.2020
Decided on	:	7.5.2022

Anil Kumar s/o Shri Lekh Raj, r/o Village Chaew, P.O. Sajao Piplu, Tehsil Sarkaghat, District Mandi, H.P. ...*Petitioner.*

VERSUS

The Managing Director, M/s Renit Power Pvt. Ltd., Village Dharampur Katha, P.O Thana, Tehsil Baddi, District Solan, H.P. ...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : In person
For the Respondent : Shri H.R. Thakur, Advocate

AWARD

Vide notification dated 30.7.2020, the appropriate government has sent the following reference to this Court for legal adjudication:

"Whether termination of services of Anil Kumar s/o Shri Lekh Raj, r/o Village Chaew, P.O. Sajao Piplu, tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 8.10.2019 by the Managing Director M/s Renit Power Pvt. Ltd., Village Dharampur Katha, P.O. Thana, Tehsil Baddi, District Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what relief including reinstatement, amount of back-wages,past service benefits and compensation the above ex-worker is entitled to from the above management?"

On receiving the said reference, an Industrial Dispute had arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition No. 163 of 2020 and accordingly, notices were issued to both the parties. The petitioner has appeared in person for the first time on 15.1.20221 on which date the respondent was willing to reengage the petitioner but the petitioner was not interested to work with the respondent and even the respondent was willing to pay the compensation as per section 25-F and the matter was adjourned to 15.2.2021 on which date the respondent has disclosed that the owner is ready to pay two months' salary as full & final settlement and the respondent is ready to re-engage the petitioner but the petitioner does not intend to work with the respondent any further as is evident from zimini order dated 15.2.2021 and thereafter the matter was adjourned to 7.4.2021, on which date, it has come on daily order sheet that the respondent has already paid the full & final to the petitioner.

For today, the matter was listed for the service of the petitioner who is present in person and stated that he does not want to proceed further with the present reference. To this effect his statement recorded separately. Therefore, I have left with no other alternative but to decide the reference on the basis of material whichever is available on case file.

As per the reference the petitioner has alleged his termination *w.e.f.* 8.10.2019 to be illegal and unjustified but, since the petitioner is not interested to pursue the present reference the same is answered in negative against the petitioner and award is passed accordingly.Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
7.5.2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number	:	37 of 2018
Instituted on	:	12.4.2018
Decided on	:	11.5.2022

Shankar Lal s/o Shri Dhani Chand, r/o Village Bahwna, P.O Bhagog, Tehsil Arki, District Solan, H.P. ...*Petitioner.*

VERSUS

1. The President Gramin Shikshit Berozgar Yuvak Sehkari Parivahan Sabha (C) Bhumati, Arki, District Solan, H.P.

2. The Registrar Co-operative Society, SDA Complex, Shimla-9 ...*Respondents.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For Petitioner	: Shri R.K Khidtta, Advocate
For Respondent No. 1	: Shri Dinesh Sharma, Advocate
For Respondent No. 2	: Ms. Reena Chauhan, Dy. DA

AWARD

This is an usual claim petition instituted on behalf of Shri Shankar Lal **(hereinafter to be referred as the petitioner)** against the **President Gramin Shikshit Berozgar Yuvak Sehkari Parivahan Sabha (hereinafter to be referred as the Respondent No.1 i.e the society)** and Registrar, Co-operative Society **(hereinafter to be referred as the Respondent No.2)** filed under **section 2-A** of the Industrial Disputes Act, 1946 **(hereinafter to be referred as the Act).**

2. Material facts necessary for the disposal of the present claim petition are thus that the petitioner was appointed as conductor by the respondent society in the year 1996 and he worked as such till 3.4.2017. The services of the petitioner have been orally terminated by the respondent's *w.e.f.* 4.4.2017 without complying with the mandatory provisions of the Act. The action on the part of respondent society is totally illegal and against the mandatory provisions of the Act. The petitioner had completed 240 days in each calendar year, hence, the termination of the petitioner is illegal, unjust and against the mandatory provisions of section 25-F of the Act. The respondent society has not followed the principles of "last come first go" as junior persons to the petitioner are still working. The petitioner is unemployed. He was forced to raise the demand notice before the Labour Officer to which the conciliation proceedings were initiated. The appropriate government has failed to send the reference to this Court.

3. The following relief clause has been appended in the footnote of the claim petition:

> "In view of the submissions made hereinabove, **it is therefore most respectfully prayed that the oral dismissal order of the petitioner passed by the President of the respondent No.1 society may kindly be declared null and void and petitioner may kindly be re-instated in service w.e.f. 4.4.2017 with all consequential service benefit such as continuity, full back-wages and other service benefits may also be given to the petitioner and the services of the petitioner may kindly be regularized as per the policy of the State Government. The respondents may also be directed**

to pay the damages for the harassment caused to the petitioner to the tune of ₹ 5,00,000/- and the respondent may also be burdened with the cost of litigation amounting to ₹ 50,000/-."

4. The lis was resisted and contested by respondent no.1 society by filing written reply on *inter-alia* preliminary objection qua maintainability, bad for misjoinder of necessary parties and the respondent society went into liquidation under section 79 (1) of the H.P. Co-operative Society Act have been raised.

5. On merits, it is submitted that the petitioner was informed that the society is under liquidation and the President or Secretary has no power to act on behalf of the society. Now, the entire working is being done under the supervision of liquidator. The petitioner had left/resigned from job and abandoned the job. The petitioner has not shown his willingness to join the duties. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 20.7.2019.

1. Whether the termination of the petitioner w.e.f. 4.4.2017 is voilative of the provisions of section 25-F (G) and (H) of the Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to? ...*OPP.*

2. Whether the claim is not maintainable as the respondent society has gone into liquidation, as alleged? If so its effects thereto? ...*OPR.*

3. Whether the claim is not maintainable as the dispute was required to be raised under the H.P. Cooperative Society Act, 1968 as alleged? If so, its effects thereto? ...*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Ld. Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter, while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Partly Yes. The petitioner is entitled to lump-sum compensation.
Issue No. 2	:	Decided accordingly
Issue No. 3	:	Decided accordingly
Relief	:	Application allowed as per operative part of the Award

REASONS FOR FINDINGS

ISSUES NO.1 to 3:

11. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In support of his case, the petitioner namely Shri Shankar Lal stepped into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of demand notice (PW-1/B) and letter sent by the Registrar Cooperative Society (PW-1/C).

13. In cross-examination, he categorically denied that the society had gone into liquidation *w.e.f.* 1.3.2017. He admitted that one Shri Budhi Ram had joined as a liquidator on 8.3.2017 and continued working as such till 23.8.2017. He also denied that he had abandoned the job of his own and had taken up employment on some other bus known as Minkashi Travels. He raised the dispute relating to his termination before the Assistant Registrar Co-operative Societies.

14. On the other hand, the respondent in support of their contention, existing in the reply, has relied upon the testimony of Shri Sher Singh, who stepped into the witness box as (RW-1) and tendered into evidence his affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply.

15. In cross-examination, he emphatically denied that the petitioner was engaged as conductor in the year 1996. He further denied that the buses of the society were being run through the contractor Shri Anant Ram Chauhan till 1998. He admitted that the society started running the buses from 20.1.1998. The petitioner had worked with the respondent till 3.5.2017. He also denied that the petitioner was terminated without serving any notice or paid compensation. No domestic enquiry was conducted. He denied that the petitioner had completed 240 days in each calendar year. He denied that the junior person Shri Sunder Singh of the petitioner was retained by the respondent. He admitted that few of the buses of society remained operational from 4.4.2017 to 9.4.2019. *Vide* (RW-1/B) the respondent society had gone under liquidation. He admitted that the buses of the society remained operational after 1.3.2017.

16. *Vide* separate statement Shri Nitin Soni, ADA for respondent no.2 has stated that he do not want to lead any evidence on behalf of respondent no.2, as instructed by the department.

17. Shri R.K Khidtta, Ld. Counsel for the petitioner contended with all vehemence that the petitioner has been engaged as conductor by the respondent society and his services have been terminated without complying with the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner had completed 240 working days with the respondent and his termination without any notice and payment of compensation is illegal and against the mandatory provisions of the Act. It is, therefore, prayed that the petitioner may kindly be reinstated in service with all the consequential service benefits including full back-wages.

18. Shri Dinesh Sharma, Ld. Counsel for the respondent no.1 society strenuously argued that the petitioner had worked as conductor with the respondent society and his services were never terminated by the respondent who himself had abandoned his job. He further argued that the society is under liquidation and the entire working is being done under the supervision of liquidator hence, the petitioner is not entitled to any relief.

19. Shri Nitin Soni, ADA for respondent no.2 also prayed for the dismissal of the claim petition.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel/ADA for the respondents and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Thus, from the careful scrutiny of the entire record of the case, it is manifestly proved that the petitioner had worked with the respondent in the year 1996 and continued working as such till 3.4.2017. It is also an admitted fact that before retrenching the services of the petitioner neither any notice nor compensation has been paid to him. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25 F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

22. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter.—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

23. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

24. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

25. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813,** Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

26. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under :

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

27. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

28. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413,** Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not**

find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

29. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479,** wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

30. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

31. In the instant case, the petitioner was enaged by the respodnent. The petitinoer had worked in the capacity of conductor, admitedly, for 19 years. The respondent society went into liquidation which jeopradized the right of the petitioner. In a case of liquidation the order regarding reinstatement would not be appropriate. The only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

32. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177 and further reiterated lately in P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.**

33. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of Rs. 80,000/- (₹ Eighty Thousand only) as lump sum compensation to the petitioner. All these issues are decided accordingly.

RELIEF

34. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is awarded lump sum compensation **of ₹ 80,000/- (Rupees Eighty Thousand only) to the workman, to be paid by the respondent society within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent society to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.,** if any, in accordance

with law. The application is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA.**

Reference Number	:	169 of 2017
Instituted on	:	3.11.2017
Decided on	:	11.5.2022

Subhash Singh s/o Shri Shamsher, Singh r/o VPO Kolar, Tehsil Paonta Sahib, District Sirmaur, H.P. …*Petitioner.*

VERSUS

The Occupier M/s Tata Global Beverages Ltd., Dhaulakuan, Tehsil Paonta Sahib, District Sirmaur, H.P. ...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner	:	Shri J.C. Bhardwaj, AR
For the respondent	:	Shri Janesh Gupta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 12.9.2017, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for legal adjudication:

"Whether termination of services of Shri Subhash Singh s/o Shri Shamsher Singh r/o VPO Kolar, Tehsil Paonta Sahib, District Sirmour, H.P. *w.e.f.* 27.11.2015 by the Factory Manager/Occupier M/s Tata Global Beverages Ltd. Dhaulakuan, Tehsil Paonta Sahib, District Sirmaur, H.P. allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, seniority, amount of back wages, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Subhash Singh **(hereinafter referred to be as**

the petitioner) has filed the statement of claim against M/s Tat Global Beverage Ltd. **(hereinafter referred to be as respondent).**

3. Key facts for the disposal of the present controversy are thus that the petitioner was engaged as helper by the respondent company during the month of October, 2005 an continued working as such till his services were dismissed y way of an improper and illegal domestic enquiry which was not conducted in accordance with the principles of natural justice. The dismissal orders are illegal in view of dictum of "Audi Alteram Partem" (no one shall be condemned unheard). There were false allegations against the petitioner regarding theft by hatching conspiracy at the behest of respondent management. There was no just, fair and proper enquiry conducted against the petitioner in this case. While conducting the domestic enquiry, the enquiry officer committed serious errors in the hot haste manner during the enquiry. Some of the errors apparent are as under:

(a) That the enquiry officer did not explain the charges properly as the management did not produce the certified standings orders nor it was given to the petitioner /workman before or at the time of commencement of the enquiry proceedings.

(b) That the enquiry officer did not allow the defence assistant and defence witnesses of the workman and as such there was a denial of the provisions of natural justice as the most vital opportunity was denied to the workman to defend himself.

(c) That the respondent management did not supply the copies of documents neither the enquiry officer provided the copies of documents prior to the deposition of the management witnesses therefore cross-examination of the witnesses was made virtually impossible. It is submitted that the workman was not allowed to cross-examine the witnesses of respondent management.

(d) That it was the duty of enquiry officer to give fair opportunity to the workman to rebut the respondent management witnesses at the final stage before disclosure of the enquiry, thus there was no final hearing by the enquiry officer from both the sides. Therefore, the conclusion of the enquiry officer cannot be taken up to the standard of law and as per natural justice.

(e) That the enquiry report is based on biased, partial and on interested witnesses by the company paid enquiry officer and a standing representative of the company and still noting could be proved against the petitioner beyond any shadow of doubt.

(f) That the impugned dismissal order is also bad on the ground that each and every aspect of the case is being investigated by the Police and the matter is being tried by the Ld. Add. Chief Judiucial Magistrate Paonta Sahib. It is submitted that Police investigation and judicial verdict is necessary according to the set precedent by the Apex Court of the land but the enquiry officer contrarily and arbitrarily proceeded to conduct the enquiry proceedings and concluded the enquiry proceedings during the commencement of trial in criminal proceedings. It is specifically submitted that the charges are identical in the both the cases/ proceedings and as such the dismissal order is bad on the ground that each and every aspects is being investigated by the Police and the matter is being tried by Ld. ACJM, Paonta Sahib and the police investigation and judicial verdict was necessary as the same matter were illegally heard and decided by the enquiry officer, therefore, the so called enquiry conducted by the enquiry officer was illegal null, void and inoperative *ab-initio* for all purposes.

(g) That the integrity of all the persons appearing as management witnesses have been doubtful as much as the fairness is concerned. They were and are the man of management just like enquiry officer, as evident from the statement of management witnesses who were not allowed to cross-examine by the enquiry officer at the relevant time therefore the enquiry stands vitiated.

4. The following prayer clause has been appended in the footnote of the claim petition. **"Now, it is respectfully prayed that the domestic enquiry conducted by the respondent company through its enquiry officer be declared null, void and inoperative and partial and under het exercise of powers vested in the Hon'ble Court under section 11-A of the Act the impugned domestic report and dismissal order be set aside while directing the respondent to reinstate the petitioner in the service of the respondent company with retrospective effect** *i.e* **date of dismissal on 23.11.2015 with full back-wages continuity and seniority along-with other consequential service benefits and that too with exemplary costs throughout"**

5. The lis was resisted and contested by filing written reply to the claim petition filed by the petitioner in terms of the reference made by the appropriate government by and on behalf of the respondent company whereby the respondent company emphatically denied all the allegation of the petitioner. It is submitted that applicant was working *w.e.f.* 1.10.2005 on the post of helper as unskilled worker in Q.C department of factory. That during tenure of his service on 11.9.2009, and 24.2.2014, applicant was found involved in indiscipline behavior and was warned accordingly not repeat such things in future. On 1.8.2015, assembling of a new shrink wrapper machine line flex 334 by MAKS automation Pvt. Ltd., made by M/s Baumer Italy in the packing section of was going on in which specialist installation engineers of M/s Maumer Italy factory technical staff and applicant himself was involved. In the course of said installation process of machine, entire working team was very upset over the missing of 18 and nos. of Brass Spacers of the new shrink rapper machine as the same could not be found by the Italian Engineer in the box at place where they were kept. After the genuine efforts of search when the spacers were not found security personnel were called out and a decision was taken to check the individual lockers and vehicles of employees. During the search process, applicant opened his locker with his own key in the presence of Mr. Aditya Nath Mishra, Assistant Manager Production Security supervisor Mr. Nasir Ali, Mr. Rajesh Kumar Sharma, Personal Officer, Mr. Subhash Walia, DGM works, Mr. Lalit Sharma, Shift Supervisor and worker *viz.* Mr. Malkeet Singh, Mr. Rakesh Kumar, Mr. Dinesh Kumar, Mr. Gurmail Singh and many other, and it was found that three of spacers were lying in his locker accordingly the Police was called to lodge the FIR against the applicant for his illegal act of commission of theft. The applicant was issued show cause as well as charge sheet for his said gross misconduct of commission of theft on 5.8.2015 and 21.8.2015 under clause 66 (7) of Standing Order as well as under clause 17 of Tata Code of Conduct and in view of unsatisfactory explanation of chargesheet of the applicant management had decided to conduct domestic enquiry on the chargesheet dated 21.8.2015. Shri Abhay Singh Chauhan, Advocate was appointed enquiry officer to conduct domestic enquiry on the chargesheet dated 21.8.2015. The respondent prayed for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the statement of claim.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 23.7.2018:

1. Whether the termination of the services of the petitioner *w.e.f.* 27.11.2015 without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified as alleged? ...*OPP.*

2. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? ...*OPP.*

3. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Yes
Issue No. 2	:	Entitled to lump sum compensation
Relief	:	Reference is answered in affirmative, per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues which are mutually exists and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. In order to substantiate his plea, the petitioner namely Subhash Singh stepped into the witness dock as (PW-1) and tendered in evidence his sworn in affidavit (PW-1/A) wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence copy of show cause notice dated 5.8.2015 (PW-1/B), reply dated 10.8.2015 ((PW-1/C), suspension letter dated 7.8.2015 (PW-1/D), copy of letter dated 13.8.2015 (PW-1/E), copy of letter dated 21.8.2015 (PW-1/F), reply of chargesheet dated 3.9.2015 (PW-1/G), letter dated 9.9.2015 (PW-1/H), representation dated 17.9.2015 (PW-1/J), copy of show cause notice dated 9.11.2015 (PW-1/K), copy of enquiry report dated 6.11.2015 (PW-1/L), reply of 2nd show cause notice (PW-1/M), copy of dismissal letter dated 23.11.2015 (PW-1/N), copy of letter dated 23.2.2016 (PW-1/O) and copies of affidavits filed by S/Shri Nasir Ali, Subhash Walia and Rajesh Kumar Sharma Mark P-1 to Mark P-3 respectively.

13. In cross-examination, he admitted that case relating to theft of spacers was made out against him and an FIR was also registered in this behalf by the respondent. He also admitted that the police had brought his signatures on the recovery memo while seizing the spacers. He further admitted that a show cause notice (PW-1/B) had been issued to him which was replied by him. He also admitted that an enquiry had been initiated against him. He denied that the enquiry officer had explained him the procedure of enquiry. He admitted his signatures on Mark P-1 and Mark P-2. He volunteered that he was merely asked to sign the proceedings on the assurance that no coercive action had been taken against him. He denied that he was afforded all opportunities to defend himself and he had refused to take the defence assistant 14.9.2015 and 17.9.2015.

14. On the other hand, the respondent has examined one Shri Ajay Singh Chauhan, Advocate as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he has stated that he is practicing as an Advocate and eh was appointed as the enquiry officer in connection with the complaint against Shri Subhash Singh by the Tata Global Beverages Ltd. He further stated that before entering into the enquiry, he had gone through the standing orders as applicable to the company and started the enquiry against the chargesheet dated 21.8.2015 by serving a notice on 11.9.2015. The enquiry was conducted as per proper procedure. He has also tendered into evidence enquiry report (RW-1/B), letter appointing him as enquiry officer (RW-1/C), issuance of chargesheet dated 21.8.2015 (RW-1/D) and reply to the chargesheet (RW-1/E).

15. In cross-examination, he denied that the copies of documents produced by him in the Court were not supplied to the petitioner. He admitted that the list of witnesses and documents were neither supplied to him nor to the petitioner. He denied that right of cross-examination was not afforded to the petitioner. He further denied that the petitioner was not allowed to lead defence evidence. He admitted that the stolen items were found from the locker of the petitioner. He further admitted that at the time of recording the statement of the petitioner dated 12.10.2015, he was cross-examined in the absence of any examination in chief. He also admitted that no cross-examination on behalf of the petitioner was conducted. He admitted that the copy of certified standing orders was not supplied to the petitioner.

16. Shri Subhash Walia, Dy. General Manager of the respondent company appeared into the witness box as RW-2, who tendered into evidence his sworn in affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply filed by the respondent company.

17. In cross-examination, he admitted that there are two unions in the company and the petitioner belongs to AITUC union. He denied that stolen item was found inside the locker on its opening at third time and nothing was recovered while opening the locker two times earlier. The list of witnesses and list of documents were not filed with the chargesheet.

18. (RW-3) Shri Nasir Ali, Security supervisor has also tendered into evidence his sworn in affidavit (RW-3/A), wherein he has stated that few of the brass spacers which were missing were found in the locker of petitioner in his presence.

19. When cross-examined, this witness has stated that on receiving the call from Rajesh Sharma, he went inside the company after checking the lockers, recovered three spacers from the locker of the petitioner. He denied that no theft had taken place before him.

20. At the very out-set, Shri J.C. Bhardwaj, AR for the petitioner contended with all vehemence that the domestic enquiry conducted against the petitioner is wholly improper and illegal which was not termed to be fair, proper and adequate and not at all conducted in accordance with the principles of natural justice. He further argued that the respondent management has hatched the conspiracy against the petitioner and thereby ordered the so called enquiry against him which is based on unfounded stigma and false charges. The domestic enquiry is vitiated on inter-alia grounds as mentioned in para 9 of the claim petition. No documents/list of witnesses were supplied to the petitioner before conducting domestic enquiry. The enquiry report is based on biased, partial and on interested witnesses by the company. The integrity of all the persons appearing as management witnesses have been doubtful as much as the fairness is concerned. Ld. AR for the petitioner further contended that the enquiry report is not in consonance with the deposition of the witnesses. Even, the reply filed by the petitioner to the chargesheet was not considered. The petitioner was punished by the respondent management as he was the active member of the workers union affiliated to AITUC.

21. *Per contra* Shri Janesh Gupta, Ld. Counsel for the respondent strenuously argued that the services of the petitioner have been dismissed by conducting a fair and valid enquiry. The opportunity of being heard was afforded to the petitioner. There is no violation of principles of natural justice. The enquiry report was duly accepted by the disciplinary authority as it was found to be genuine. Since, the charges levied against the petitioner vide chargesheet were duly proved, hence his services have been rightly dismissed by the respondent. He prayed for the dismissal of the claim petition.

22. I have given my best anxious considerable thought to the submissions of respective Counsel for the parties and also scrutinized the entire case record with minute care, and caution and circumspection.

23. Thus, from the careful perusal of the entire case record, the case of the petitioner is manifestly clear that the termination of the services of the petitioner *w.e.f.* 27.11.2015 by issuing the dismissal order by the respondent allegedly without complying with the provisions of the Act, is amounting to be termed as illegal and unjustified. It is alleged that the dismissal order of the petitioner by terminating his services by way of conducting domestic enquiry which is not at all in consonance with the principles of natural justice. Similarly, the domestic enquiry has not been conducted according to the procedure established by law and following the model standing orders. There are not only irregularity in conducting the domestic enquiry even the documents which were relied upon by the respondent in chargesheet were not supplied to the petitioner. More so the right to cross-examine the witnesses was not afforded to the petitioner. On perusal of the enquiry report as well as proceedings it is crystal clear that all the witnesses examined by the respondent management were not cross-examined rather it is recorded that "nill opportunity given". No reason has been assigned. The signatures of the petitioner were not obtained. However, the case of the respondent is that the petitioner was engaged as helper/unskilled worker in quality control department on 1.10.2005. The petitioner has indulged himself in indiscipline behavior for which he was warned. On 1.8.2015, during installation of new Shrik Wrapper Machine Line Flex 334 by MAKS Automation Pvt. Ltd. imported from Italy, there were as many as 18 number of Brass Spacers were found missing and after search three number of Brass Spacers were lying in the locker of the petitioner. Thereafter, the petitioner was issued show cause as well as chargesheet and after conducting a fair and proper domestic enquiry, the services of the petitioner were dismissed by adopting the desired procedure and the petitioner was afforded with every possible opportunity. However, it is not so.

24. In the instant case, the main allegation levelled against the petitioner is that when the brass spacers were not found, security personnel were called out and a decision was taken to check the individual lockers and vehicles of employees. During the search process, applicant opened his locker with his own key in the presence of Mr. Aditya Nath Mishra, Assistant Manager Production Security supervisor Mr. Nasir Ali, Mr. Rajesh Kumar Sharma, Personal Officer, Mr. Subhash Walia, DGM works, Mr. Lalit Sharma, Shift Supervisor and worker *viz*. Mr. Malkeet Singh, Mr. Rakesh Kumar, Mr. Dinesh Kumar, Mr. Gurmail Singh and many other, and it was found that three of spacers were lying in his locker accordingly the Police was called to lodge the FIR against the applicant for his illegal act of commission of theft. In order to prove the charges levelled against the petitioner qua committing of misconduct of theft of three brass spacers which were found inside the locker of the petitioner. It is also alleged that some of the brass spacers were recovered on the indulgence of the petitioner. However, it was not the allegation during the chargesheet. The main allegation is with regard to theft of three brass spacers which were found inside the locker of the petitioner. The entire crux of the enquiry report is only with regard to theft of three brass spacers which were found inside the locker of the petitioner. From the enquiry proceedings, it would clearly transpired that during enquiry proceedings, the statements of S/Shri Subhash Walia, Rajesh Sharma and Nasir Ali have been recorded by way of tendering affidavits (AW-1 to AW-3)

respectively which were placed on enquiry file. This apart, the enquiry officer has also recorded the oral testimony of Shri A.N Mishra, Malkiyat Singh and Dinesh Kumar, however, the witnesses produced by the management have not been subjected to cross-examination. The recording of reason "nill opportunity given" was not be sufficient. Even, it is so, I failed to understand then what prevented the enquiry officer to take the signatures of the petitioner. In my humble opinion, such procedure adopted by the enquiry officer is clear cut violation of principles of natural justice. The deposition of any witness can be tested his veracity or to impact the credibility of a witness would be subject to the conducting of test of cross-examination. The deposition of a witness in the shape of examination in chief in the sheer absence of test of cross-examination, shall not be regulated as a complete deposition. It is settled principle of law that every offender accused or delinquent shall be presumed to be innocent until or unless he is proved to be guilty on the principles of beyond reasonable doubts in a criminal case or on the principles of beyond the preponderance of probability in civil case or enquiry matter. Admittedly, the non-affording the right to cross-examine to a witness is a clear cut violation of principles of natural justice.

25. Verily, the pleaded case of the respondent is that in the defence, the statement of the petitioner was recorded wherein it is recorded that the petitioner do not want to say anything in his defence. At the cost of repetition, the sole basis of the enquiry report as well as dismissal order issued by the respondent management is with regard to the theft of three brass spacers, which were found inside the locker of the petitioner. Admittedly, the criminal case is pending and final judicial verdict/decision is yet to be arrived. The petitioner/witnesses without being cross-examined during the course of enquiry has no significance in the eyes of law. The non-cross-examination of the witnesses examined by the respondent management during the course of enquiry proceedings conducted by the enquiry officer (RW-1), is in violation of the principles of natural justice as well as against the procedure established under the model standing orders and rules thereof. Similarly, the documents relied upon by the respondent management were not supplied to the petitioner, therefore, the termination of the services by dismissal order, being outcome of domestic enquiry report is also not sustainable as reasonable opportunity of being heard was not afforded to the petitioner.

26. By now, it is fairly well settled that any material to be relied upon during disciplinary proceedings had to be supplied in advance to the chargesheeted employee and the failure thereof is fatal. A reasonable opportunity to defend an employee in the proceedings and the principles of natural justice also demanded that none is to be condemned un-heard.

27. Furthermore, the respondent in order to establish the misconduct of the petitioner before this Court/Tribunal had also examined as many as three witnesses to substantiate its plea. The respondent management has examined the enquiry officer (RW-1), Dy. General Manager (RW-2) and Security Supervisor (RW-3), who have categorically admitted that at the time of recording the deposition of the delinquent, he was not subjected to any cross-examination. It is also admitted that no theft had taken place before them. The Security Supervisor (RW-3) has deposed that after checking three spacers were recovered from the locker of the petitioner whereas at the same time Dy. General Manager of the respondent company (RW-3) has stated in his cross-examination that eight spacers were found inside the locker of the petitioner. Such deposition by both the witnesses create serious doubt of conspiracy against the petitioner. As discussed earlier, the respondent management had conducted the domestic enquiry in violation of the provisions of the principles of natural justice and model standing orders.

28. Another significant fact which prominently comes to the fore is that before imposing punishment of dismissal, no opportunity was afforded to the petitioner to at least reply to the enquiry report. By stretch of no imagination, it could be legitimately concluded that unless the certified standing orders provides a 2nd show cause notice on the proposed punishment is not a

condition precedent, as has been held by the Hon'ble Supreme Court in **Associate Cement Company Ltd. Vs. T.C Shrivastva and others 1984 (Supp.) SCC 87,** but, the fact remains that at least reply has to be sought on the findings recorded by the enquiry officer. In a case second show cause notice not issued, at least the comments/reply of the petitioner was the minimum which should have been called for by the respondent management on the basis of so called domestic enquiry report. It was not done, for imposing the harsh and oppressive punishment of dismissal of service. Shri Subhash Walia (RW-1) has nowhere stated in his affidavit (RW-2/A) that after the enquiry report 2nd show cause notice has been issued to the delinquent/petitioner. He only deposed in his affidavit that after the report being received the services of the workman were terminated *vide* letter dated 23.11.2015. Meaning thereby that the respondent management had failed to issue second show cause notice to the delinquent/petitioner.

29. For the reasons stated hereinabove clearly shows that the respondent had failed to abide by the well settled principles of natural justice. The no supply of documents, by not affording opportunity of cross-examination to the petitioner and the act of the respondent in not even seeking the reply/comments on the enquiry report has caused de-facto prejudice to the petitioner. It is thus manifestly clear that the non-supply of material to be relied upon during the course of enquiry has breached the principles of natural justice. The irresistible conclusion is that the delinquent had been denied reasonable opportunity of defending himself in the proceedings. The enquiry is thus held to be bad in the eyes of law. The enquiry was not fair and proper and as such is set aside and quashed.

30. Now, the question which arises before me as to what benefits the petitioner is entitled to? To this effect, Ld. AR for the petitioner has prayed that the petitioner may be reinstated in service with seniority, continuity and full back-wages. On the other hand, the Ld. Counsel for the respondent contended that in case this Court/Tribunal comes to the conclusion that the services of the petitioner have been terminated illegally, then the petitioner may kindly be compensated in terms of money by granting him lump sum compensation. He further argued that since the petitioner has involved himself in a case of theft, hence the respondent management has lost faith upon him.

31. Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813, Hon'ble Supreme Court observed as under:**

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

32. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under :

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

33. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

34. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413,** Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

35. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479,** wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:
>
> **"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."**

36. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

37. In the instant case, the petitioner was enaged by the respodnent as helper and worked for 10 years with the respdonent company.

38. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177 and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.**

39. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation

amount of Rs. 1,40,000/- (` One Lacs and Forty Thousand only) as lump sum compensation to the petitioner. Both these issues are decided accordingly.

RELIEF

40. As a sequel to my aforesaid discussion and findings on issues no.1 & 2, the claim of the petitioner succeeds and is hereby allowed. **The respondent company is directed to pay lump-sum compensation of Rs. 1,40,000/- (` One Lacs and Forty Thousand only) to the petitioner within a period of four months from the date of receipt of the award, failing which the same shall carry interest @ 9% (nine percent) per annum.** The reference is answered in favour of the petitioner and against the respondent. Let a copy of this award be communicated to the appropriate government for its due publication in an official gazette. File, after completion, be consigned to records.

41. The reference is answered in the aforesaid terms.

Ordered accordingly.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number	:	105 of 2016
Instituted on	:	1.11.2016
Decided on	:	11.5.2022

Jai Chand s/o Shri Pat Ram, r/o Village Madhana, P.O. Madhana (Morni Hill), Tehsil and District Panchkula, Haryana ...*Petitioner.*

VERSUS

M/s Venus Remedies Ltd. Hill Top Industrial Estate, EPIP Phase-1, Bhatoli Kalan, Baddi, District Solan, H.P. ...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the petitioner	:	Shri Gaurav Sharma, Advocate
For the respondent	:	Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 1.9.2017, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"Whether termination of services of Shri Jai Chand s/o Shri Pat Ram r/o Village Madhana, PO Madhana (Morni Hill), Tehsil and District Panchkula, Haryana *w.e.f.* 28.7.2015 by the Employer/Factory Manager M/s Venus Remedies Ltd. Hill Top Industrial Estate, EPIP Phase-1, Bhatoli Kalan, Baddi, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Jai Chand **(hereinafter referred to be as the petitioner)** has filed the statement of claim against M/s Venus Remedies Ltd **(hereinafter referred to be as respondent).**

3. Key facts for the disposal of the present controversy are thus that the petitioner was engaged as Plumber by the respondent on 19.10.2004, on monthly salary of Rs.13000/-. The petitioner had completed 240 working days in a calendar twelve months preceding his termination. The respondent had issued show cause notice to the petitioner that due to his negligence production stopped because of choking of filters of Nitrogen plant during the ongoing production and has resulted into major losses to the respondent. The show cause notice dated 22.5.2015 was duly replied, however, the services of the petitioner were terminated without issuing any notice, chargesheet and conducting of enquiry in violation of the provisions of the Act. The petitioner raised a demand notice dated 7.8.2015. The termination of the service of the petitioner is illegal, unjust and violative of the mandatory provisions of the Act.

4. The following prayer clause has been appended in the footnote of the claim petition.

"It is most respectfully prayed that the present petition may kindly be allowed to the following extent:

(a) That the impugned termination of the petitioner may kindly be quashed and set aside and the respondent may be directed to reinstate the petitioner on his earlier position w.e.f. 21.5.2015 i.e from the date of his illegal retrenchment/termination for all intent and purposes including seniority, back-wages, increment in salary and other benefits etc.

(b) That the respondent may kindly be directed to pay the wages and other due amounts, enhancement in wages and other benefits alongwith 18% interest w.e.f 21.5.2015 till its payment to the claimant.

(c) entire record pertaining to the present case may kindly be summoned for the perusal of this Hon'ble Tribunal "

5. The lis was resisted and contested by filing written reply to the claim petition by the petitioner in terms of the reference made by the appropriate government by and on behalf of the respondent company, on inter-alia preliminary objections that the claim petition in terms of reference made by the appropriate government to this Court is neither competent nor maintainable, not approached the Court with clean hands and the petitioner is gainfully employed.

6. On merits, it is submitted that the enquiry officer conducted the enquiry, as per the principles of natural justice and fair hearing. The charges leveled against the petitioner were duly proved in the domestic enquiry. The full and final payment of Rs. 49,184/- was duly paid to the petitioner. There were number of complaints against the petitioner. The show cause notice dated

21.5.2015 was treated as chargesheet. The reply dated 22.5.2015 was not found satisfactory. The petitioner was rightly dismissed from service. It is therefore prayed that the claim petition may kindly be dismissed.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the statement of claim.

8. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 6.3.2019:

1. Whether the termination of the services of the petitioner *w.e.f.* 28.7.2015 is in violation of the statutory provisions of section 25-F of the Industrial Disputes Act, as alleged? ...*OPP.*

2. Whether the reference is not maintainable, as alleged. If so, its effect thereto? ...*OPR.*

3. Relief.

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1	:	Yes. Entitled to re-instatement with seniority and continuity along-with back-wages @ 25%.
Issue No. 2	:	No
Relief	:	Reference is answered in affirmative, as per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO.1.

12. In order to substantiate his plea, the petitioner namely Shri Jai Chand stepped into the witness dock as (PW-1) and tendered in evidence his sworn in affidavit (PW-1/A) wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence show cause notice (PW-1/B), reply to show cause notice (PW-1/C), demand notice (PW-1/D) and appreciation letters Mark P-1 to Mark P-4.

13. In cross-examination, he admitted to have been appointed as a Plumber and his last drawn wages Rs. 12030/- He further admitted that show cause notice was issued on 21.5.2015. He denied that an enquiry was conducted. He denied that chargesheet (R/A) was sent to him on 29.5.2015 which he had refused to take. He further denied that the chargesheet was supplied to him in the presence of two witnesses namely Rattan Chand and Shiv Ram and he had refused to receive the same on 1.6.2015. He denied that the same show cause notice has been sent to him on 3.6.2015 by registered post *vide* (R/B) along-with RAD and which was received by him. He denied that the

letter dated 3.6.2015 bears his signatures on (R/C). He admitted his signatures on letter (R/D). He denied to have associated in the enquiry proceedings. He denied that he had joined the enquiry proceedings and appeared before the enquiry officer. He denied that his statement was recorded during the enquiry. He admitted that an amount of Rs. 49184/- had been paid to him.

14. On the other hand, the respondent has examined one Shri Vijay Kumar, Assistant General Manager as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of resolution (RW-1/B), copy of counter file (RW-1/C), enquiry report (RW-1/D), enquiry proceedings (RW-1/E), letter dated 29.5.2015 (RW-1/F), reply dated 22.5.2015 (RW-1/G), show cause notice dated 21.5.2015 (RW-1/H), copy of cheque Mark RA, postal receipt Mark RB, termination letter Mark RC, notice dated 22.7.2015 Mark RD, letter dated 6.5.2015 Mark RE, show cause notice dated 3.6.2015 Mark RF and letter dated 29.5.2015 Mark RG.

15. In cross-examination, he admitted that Shri Rakesh Batish was the incharge of Engineering Department and Nitrogen plant was under engineer department. He admitted that the enquiry officer was working as Chief General Manager in the company. He volunteered that the petitioner was issued show cause notice-*cum*-chargesheet dated 21.5.2015. He denied that the services of the petitioner were terminated by not complying with the provisions of the Industrial Disputes Act. He denied that the job of the petitioner was to work as water operator and not to perform the duty in nitrogen plant. He admitted that after receiving of the report of the enquiry officer on the chargesheet the petitioner was not issued any second show cause notice.

16. At the very out-set, Shri Gaurav Sharma, Ld. Counsel for the petitioner contended with all vehemence that the termination/retrenchment of the services of the petitioner by the respondent company vide termination letter dated 28.7.2015 without complying with the provisions of the Act. The petitioner was engaged as Plumber on 19.10.2004 on monthly salary of Rs. 13,000/. It is only after 2015, the petitioner had raised the issue of unfair labour practice and misbehavior as the attitude of the superiors towards the petitioner turned hostile. There was false and concocted allegations leveled against the petitioner with whose negligence the production was stopped because of chocking of filters in nitrogen plant during the ongoing production and has resulted into major losses to the company. He further argued that the petitioner was simply engaged as Plumber to work in water plant and the work of nitrogen plant does not come in any way in his duties which was to be operated by qualified engineers. The termination of the services of the petitioner is illegal being violative of the provisions of the Act. The Ld. Counsel for the petitioner has also contended that from the admission of respondent witness (RW-1), that the nitrogen plant was under the supervision and control of engineers department and no chargesheet has been served except the show cause–cum-chargesheet dated 25.5.2015, it is clear that the respondent violated the provisions of the Act. He thus prayed that respondent be directed to reengage the petitioner in service on the same post and place where he was working prior to his termination with seniority and continuity along-with full back-wages as the petitioner is nowhere employed after his illegal termination.

17. Per contra Shri Rahul Mahajan, Ld. Counsel for the respondent strenuously argued that the services of the petitioner have been dismissed by conducting a fair and valid enquiry. The opportunity of being heard was afforded to the petitioner. There is no violation of principles of natural justice. The enquiry report was duly accepted by the disciplinary authority as it was found to be genuine. Since, the charges levied against the petitioner vide show cause notice-*cum*-chargesheet were duly proved, hence his services have been rightly dismissed by the respondent. He prayed for the dismissal of the claim petition.

18. I have given my best anxious considerable thought to the submissions of respective Counsel for the parties and also scrutinized the entire case record with minute care, and caution and circumspection.

19. Before arriving at the just decision of the case, I would like to embed here in the provisions of section 2-s of the Act, which reads as under:

> **"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, dischasrge or retrenchment has led to that dispute, but does not include any such person--**
>
> **(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or**
>
> **(ii) who is employed in the police service or as an officer or other employee of a prison; or**
>
> **(iii) who is employed mainly in a managerial or administrative capacity; or**
>
> **(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.**

20. There is absolutely no denial to the fact that the applicant comes with the definition of workman and he is the workman of respondent company and as such the applicant is definitely a "workman" comes within the ambit and scope of the Act. It is also admitted fact on record that the services of the petitioner were terminated by holding domestic enquiry. The charges levelled against the petitioner *vide* show cause notice dated 21.5.2015, which was also allegedly treated as chargesheet are as under:

> "You are being found negligent, ignorant towards assigned task not attentive during your duties. Due to your negligence the production stopped yesterday because of chocking of filters of Nitrogen plant during the ongoing production. This effects the quality of product adversely. Your negligence has resulted a major loss to the company and that might lead to defective quality of Life Saving Drugs.
>
> In view of the above, you are hereby suspended immediately for one week and submit your written explanation as to why suitable disciplinary action should not be taken against you for the above said ignorance and negligence of work."

21. Thus, from the careful perusal of attendant facts and circumstances of the case record, it is an admitted position emerges on record that the services of the petitioner were engaged as Plumber *w.e.f.* 19.10.2004 on monthly salary of ₹ 13,000/-. The services of the petitioner were terminated *vide* termination letter dated 28.7.2015. The case set up from the side of the respondent is that the services of the petitioner were terminated by the respondent on conducting a fair and proper domestic enquiry. The enquiry officer was a fair, independent and impartial person who conducted the enquiry by applying the principles of natural justice and fair hearing. He afforded full opportunity of being heard to the petitioner. The charges levelled against the petitioner stood satisfactorily proved in the domestic enquiry. The petitioner was paid full & final due amount.

22. In the instant case, it is quite deductible from the perusal of the case record that the petitioner was served with the show cause notice dated 21.5.2015 alleging thereby that he was found negligent, ignorant towards performing his duties and not attentive during his duties. Due to his negligence, the production of the company was stopped because of chocking of filters of nitrogen plant during ongoing production resulting into huge losses to the company. In reply to the show cause notice, the petitioner vide letter dated 22.5.2015 had submitted that the chocking of nitrogen filters does not come in any way, a part of his integral duties, as the nitrogen plant has to be operated by a qualified Engineer and no such training was imparted to the petitioner in this regard. It is beyond the capacity of a Plumber. The Engineers could take responsibility regarding the operation of the nitrogen plant. The petitioner also raised the demand notice dated 26.5.2016 regarding his illegal termination. It is an admitted position on record that no chargesheet has been served/delivered to the petitioner. According to the respondent witness (RW-1), the show cause notice (PW-1/D) was treated as chargesheet. It is also an admitted fact that there is no such word has ever been inserted to decipher that the show cause notice be treated as chargesheet. It is also an admitted position on record by respondent witness that no second show cause notice has been issued to the petitioner before terminating his services.

23. Admittedly, the services of the petitioner were terminated *vide* termination letter dated 28.7.2015. The non-issuance of chargesheet before conducting the enquiry and second show cause notice after conducting the enquiry is nonest in the eyes of law.

24. Verily, during the cross-examination of Shri Vijay Kumar, Assistant General Manager (RW-1), he categorically admitted that the overall incharge of engineering department was Shri Rakesh Batish and the nitrogen plant was under the ngineering department. He also admitted that the enquiry officer was working as Chief General Manager of the Company. He further admitted that before terminating the services of any employee, it is mandatory to serve the chargesheet upon the delinquent. He admitted that second show cause notice has not been issued to the petitioner. Thus, it is an admitted position on record that neither the petitioner was served/delivered any chargesheet nor any second show cause notice issued to him, before terminating his services.

25. By now, it is fairly well settled that any material to be relied upon during disciplinary proceedings had to be supplied in advance to the chargesheeted employee and the failure thereof is fatal. A reasonable opportunity to defend an employee in the proceedings and the principles of natural justice also demanded that none is to be condemned un-heard.

26. Another significant fact which prominently comes to the fore is that before imposing punishment of dismissal, no opportunity was afforded to the petitioner to at least reply to the enquiry report. By stretch of no imagination, it could be legitimately concluded that unless the certified standing orders provides a 2nd show cause notice on the proposed punishment is not a condition precedent, as has been held by the Hon'ble Supreme Court in **Associate Cement Company Ltd. Vs. T.C Shrivastva and others 1984 (Supp.) SCC 87,** but, the fact remains that at least reply has to be sought on the findings recorded by the enquiry officer.

27. The respondent witness Shri Vijay Kumar Pal (RW-1) has stated in his sworn in affidavit (RW-1/A) that second show cause notice dated 22.7.2015 was issued to the petitioner whereby he was instructed to report for his duty, however, neither the petitioner reported for his duty nor he replied to the said show cause notice. When cross-examined, this witness has admitted that no show cause notice has been issued to the petitioner. It is manifestly clear from the perusal of letter dated 22.7.2015, which demonstrated that the same has been issued to the petitioner regarding unauthorized leave. In the said letter there is no mention about the so called domestic enquiry. Therefore, it cannot be said that the respondent company has been issued second show cause notice to the petitioner before terminating his services. In a case second show cause notice not issued, at

least the comments/reply of the petitioner was the minimum which should have been called for by the respondent management on the basis of so called domestic enquiry report. It was not done, for imposing the harsh and oppressive punishment of dismissal of service.

28. For the reasons stated hereinabove clearly shows that the respondent had failed to abide by the well settled principles of natural justice. The non-issuance of chargesheet to the petitioner and the act of the respondent in not even seeking the reply/comments on the enquiry report has caused de-facto prejudice to the petitioner. It is thus manifestly clear that the non-supply of material to be relied upon during the course of enquiry has breached the principles of natural justice. The irresistible conclusion is that the delinquent had been denied reasonable opportunity of defending himself in the proceedings. The enquiry is thus held to be bad in the eyes of law. The enquiry was not fair and proper and as such is set aside and quashed. Resultantly, the petitioner is held entitled for his reinstatement in service with seniority and continuity. The petitioner is also held entitled to back-wages @ 25% from the date of his illegal termination till his reengagement. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2.

29. In order to prove this issue no specific evdeince has been led by the respdonent, which could go to show as to show the reference is not maintainable. Moreover, in view of my findings on issue no.1, I find nothing wrong with this reference which is perfectably maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respodnent.

RELIEF

30. As a sequel to my aforesaid discussion and findings on issues no.1 & 2, the claim of the petitioner succeeds and is hereby allowed. **The respondent company is directed to re-engage the petitioner on the same post and place, where he was working prior to his termination with seniority and continuity in service. The respondent company is also directed to pay back-wages @ 25% from the date of his illegal termination till his reengagement, failing which the same shall carry interest @ 9% (nine percent) per annum.** The reference is answered in favour of the petitioner and against the respondent. Let a copy of this award be communicated to the appropriate government for its due publication in an official gazette. File, after completion, be consigned to records.

31. The reference is answered in the aforesaid terms.

Ordered accordingly.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number : 152 of 2017
Instituted on : 2.12.2017

Decided on : 11.5.2022

Sunil Kumar s/o Shri Ram Rattan r/o Village Bagharni, P.O. CRPF Pinjore, Tehsil Kalka, District Panchkula, Haryana ...*Petitioner* .

VERSUS

M/s Milestone Gears Pvt. Ltd., Plot No. 58, Sector-1, Industrial Area, Parwanoo, H.P. through its General Manger ...*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Khushi Ram Verma, Advocate
For respondent : Shri Rahul Mahajan, Advocate

AWARD

1. Shri Sunil Kumar **(hereinafter to be referred as the petitioner) preferred the present one usual claim petition against the General Manager, Milestone Gears (hereinafter to be referred as the respondent),** which has been filed under section 2-A of the Industrial Disputes Act, 1946 **(hereinafter to be referred as the Act)** praying therein that to issue appropriate directions to the respondent company to reinstate the services of the petitioner.

2. Material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged as an operator by the respondent on 24.3.2012 on monthly salary of ₹ 6000/-. The petitioner had worked as such till his termination *i.e* 14.8.2015 for more than three years and has completed 240 days in twelve calendar months preceding his termination. The respondent had retrenched and terminated the services of the petitioner *w.e.f.* 17.8.2015 orally without giving any prior notice and even opportunity of being heard was not afforded to him. The respondent has terminated the services of the petitioner in violation of the provisions of section 25-F, 25-G and 25-H of the Act as junior persons were retained. No enquiry, show cause notice, chargesheet whatsoever worth the name was issued/conducted. The dismissal of the services of the petitioner is illegal, unjust and unlawful as such the same is sought to be quashed and declared null and void.

3. The following prayer clause has been appended in the footnote of the claim petition.

"It is therefore, most respectfully prayed that the petitioner may kindly be reinstated with all consequential benefits, seniority, back-wages and be treated as per his original appointment with all consequential reliefs in the interest of justice. It is respectfully submitted that no special favour is sought by the petitioner but equal treatment as provided by law is prayed for. The dismissal of services of the petitioner by the respondent concern is sought to be quashed and set aside which is illegal and against the principles of natural justice and administrative norms."

4. The lis was resisted and contested by the respondents filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, concealment of true and material facts and absenteeism *w.e.f.* 17.8.2015 have been taken.

5. On merits, it is submitted that the petitioner was appointed as operator on 25.3.2013 till 13.8.2015 on monthly wages of ₹ 5980/-. It is denied that the petitioner had completed 240 working days. It is submitted that the petitioner had absented without taking any leave/prior

permission/ intimation w.e.f. 17.8.2015. Registered notices dated 18.9.2015, 23.9.2015 and 29.9.2015 were sent to the petitioner to resume his duties and to explain his unauthorized absence. The petitioner failed to join the duties as such his name was struck off from the rolls of the respondent. The petitioner himself out of his own free will abandoned the job. The petitioner was never terminated, in fact, he had unauthorizedly absented and failed to resume his duties. The petitioner is gainfully employed as the job which the petitioner was doing is readily available in an around industrial area of Parwanoo, Barotiwala, Nalagarh and Baddi. In case there has been violation of principles of natural justice, respondent be allowed to lead evidence on merits to prove the misconduct of absenteeism and abandonment. There is no violation of section 25-F, G and H of the Act. It is therefore most respectfully prayed that petition filed by the petitioner is devoid of merits and deserves to be dismissed.

6. By filing rejoinder the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 3.10.2018:

1. Whether the termination of the petitioner by the respondent *w.e.f.* 17.8.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? ...*OPP.*

2. If issue no.1 I proved in affirmative, to what relief of service benefits the petitioner is entitled to? ...*OPP.*

3. Whether the claim petition is neither competent nor maintainable as alleged? ...*OPR.*

4. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Yes
Issue No. 2	:	Entitled to reinstatement with seniority and continuity along-with back-wages @ 25%.
Issue No. 3	:	No
Relief	:	Application is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues which are mutually exists and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. In order to substantiate its plea, the petitioner namely Sunil Kumar examined himself as (PW-1) and tendered into evidence his sworn-in affidavit (PW-1/A) wherein he has reiterated almost all the averments, as stated in the claim petition.

13. In cross-examination, he admitted that his wages while working as an operator was ₹ 5980/-. He denied that he had stopped coming to the industrial unit after 17.8.2015. He further denied that he had been sent registered letter dated 18.9.2015, 22.9.2015 and 28.9.2015 (R-1) to (R-3) respectively to report for duty. He admitted that the address reflected in (R-I) to (R-3) are the same as shown in (R-4). He denied that he had left the job of his own sweet will. He denied that he was never stopped from work after 15.8.2015 to attend the work. He denied that he is running a general store in his village from where he is earning more than 20-30 thousand.

14. (PW-2) Shri Mahinder Singh has deposed that he used to work in Milestone Factory in the year 2015. The petitioner used to work in the said factory and he was removed from service in August, 2015. The other workers who were engaged along-with the petitioner are still working in the factory.

15. In cross-examination he admitted that the petitioner was an operator. He expressed his ignorance that the petitioner had been sent letters to re-join his work after 17.8.2015. He denied that the petitioner had left the services of his own.

16. In order to rebut, the respondent has examined Shri R.P Sharma, Divisional Head HR as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of attendance register (RW-1/B) and one photograph (RW-1/C) and receipt mark RA.

17. In cross-examination, he admitted that the respondent company is still working. The petitioner was working as helper-cum-operator in their company. One Shri Tarsem had been appointed in place of petitioner. He admitted that the petitioner was neither issued retrenchment notice or conducted any enquiry against him. He denied that the registered letters issued to the petitioner have not been received by him. He denied that the respondent company did not comply with the mandatory provisions of the Industrial Disputes Act.

18. At the very out-set, Shri Khushi Ram Verma, Ld. Counsel for the petitioner contended with all vehemence that the termination of the services of the petitioner is against the principles of natural justice as neither any show cause notice nor retrenchment compensation was issued/paid to the petitioner. Further, such termination of the services of the petitioner is against the certified standing orders of the company which are in statutory force and therefore the termination must be inconsonance with the mandate of the Act. Even the petitioner had been deprived from the right of being heard which is totally illegal and unjust. In support of his contention he relied upon a judgment of Hon'ble Supreme Court delivered in case titled as **D.K Yadav Vs. JMA Industries Ltd. (1993) 3 SCC 259.**

19. *Per contra* Shri Rahul Mahajan, Ld. Counsel for the respondent strenuously argued that the petitioner had abandoned the job of his own sweet will and despite issuance of letters, the petitioner has failed to resume his duties, hence, his name was struck off from the attendance register. He also argued that the abandonment of service by an employee and termination entails positive on the part of the employer such an act cannot be termed as retrenchment. The employee

reserves a right to abandon the job at any time either by submitting resignation or by not attending his duties for a long time. Absence from duty without any sanction leave/intimation is a serious misconduct. He argued that the respondent company has not violated the provisions of the Act.

20. I have given my best anxious considerable thought to the submissions of respective Ld. Counsel for the parties and also scrutinized the entire case record with minute care, caution and circumspection.

21. Thus, in the attendant facts and circumstances of the case, it could be legitimately summed up by this Court that the services of the petitioner were engaged as an operator on 24.3.2012. The parties are not at all at variance that the petitioner had worked in such capacity from 24.3.2012 till the date of his termination *i.e*. 17.8.2015. As such the petitioner had worked for more than 5 years with the respondent. The petitioner has approached for redressal of his grievance that there was an oral termination. On the other hand it is pleaded that the services of the petitioner were not terminated but he has abandoned the job out of his own sweet will.

22. The first and foremost question which comes to the fore for determination is whether the services of the petitioner has been terminated or he had abandoned the job himself.

23. In the peculiar facts and circumstances of the case, I am of the considered opinion that it is a matter of common parlance that the abandonment has to be proved by the employer like any other misconduct. Merely on the pretext that the workman has failed to report for discharging his duties, it cannot be presumed that the petitioner either left the job or abandoned the same. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is neither any oral or documentary evidence on record on the part of the respondent to show that any show cause notice was served upon the petitioner calling upon him to join his duties. Absence from duty is a serious misconduct. As such the plea of abandonment put forth by the respondent/employer is not established.

24. Be it stated, as it may, the defence of the respondent is also to the effect that the petitioner had engaged as an operator by the respondent and his services were never been terminated rather he himself has abandoned his job. It is also borne out form the record that no disciplinary action was initiated against the petitioner by the respondent because of the alleged absence from duty. At the cost of repetition, the respondent has miserably failed to prove abandonment on record.

25. Furthermore, another limb of submission raised from the side of the respondent is also to the effect that the petitioner had left the job out of his own sweet will and thereafter abandoned the job. Though, the respondent has placed on record the copy of attendance register (RW-1/B) wherein the attendance of the petitioner was marked as absented. The case of the petitioner is that his services were terminated on 17.8.2015 without issuing any notice or making payment of compensation. No warning letter or charge-sheet was issued to him. It is no longer res-intergra that even in a case of unauthorized absenteeism or to prove abandonment of service on the part of the workman, the management must place on record necessary material/proof to substantiate their plea. The management required to prove that enough efforts were made by it to call upon the petitioner to resume back his duties and the petitioner/claimant has exhibited his clear reluctance for resuming back his duty.

26. The attention of the parties is hereby drawn to the pronouncement of decision by the Hon'ble Apex Court in case titled as **G. T. Lad vs. Chemicals and Fibres of India 1979 (1) SCC 590,** wherein it has been held by their Lordship of the Hon'ble Supreme Court that to

constitute abandonment there must be total or complete giving up of duties so as to indicate an intention not to resume the same. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case. It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The intention may be inferred from the acts and conduct of the party.

27. In the instant case, it is proved, to the utter satisfaction of this Court that the petitioner was engaged as an operator 24.3.2012 and was paid salary of ₹ 5980/-. Admittedly, the petitioner had continued to work in such capacity till his termination. It is satisfactorily proved on record that the petitioner had worked for three years with the respondent and had completed 240 working days in a calendar year. Though, there is a denial on the part of the respondent but this fact has nowhere been proved or established from the side of the respondent that the petitioner had not completed 240 days in a calendar year preceding his termination. Such being the position, it stand proved on record that the workman/petitioner had worked for the required 240 days of working in the period of twelve calendar months preceding the date of termination, he is entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are attracted in this case. It is also admitted that before retrenching the services of the petitioner neither any notice nor compensation has been paid to the petitioner as provided under section 25-F of the Act. Then, it stood clearly established from the admission made by the respondent (RW-1) that the petitioner had worked for 240 days in the preceding twelve calendar months prior to his disengagement. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

> "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
>
> (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
>
> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

28. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

> **"25B. Definition of continuous service. For the purposes of this Chapter.—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

29. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit.

30. Furthermore, in terminating the services of the petitioner, the respondent appears to have violated the provisions of Section 25-G of the Act as well. The said Section provides:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

31. The petitioner in his affidavit (PW-1/A) has duly maintained that after his termination, the respondent has engaged new person in his place. Moreover, Shri R.P Sharma (RW1) admitted in his cross-examination that one Shri Tarsem had been appointed in place of the petitioner. Such admission on the part of the respondent indicates that the person junior to the petitioner is still serving the respondent. There is nothing on the file to establish that at the time of engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner). Thus, the respondent has failed to adhere to the principle of 'last come first go'. Engaging the juniors at the cost of the senior is nothing but unfair labour practice.

32. Such being the situation, the respondent can safely be held to have violated the mandatory provisions of Sections 25-B, 25-F and 25-G of the Act.

33. Again, it has been held by the Hon'ble Apex Court in **M/s Scooters India Ltd., Vs. M. Mohammad Yaqub 2011 (1) SCC 61 that:** "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls." It was further held that: "The principles of natural justice were required to be followed by giving opportunity to the workman. Para 12 is relevant and is reproduced as under:

"The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of

natural justice have been compiled with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

34. So, keeping in view the law laid down by the Hon'ble Apex Court (*Supra*) and keeping in view the attendant facts and circumstances of the present case, I have no hesitation in coming to the conclusion that the respondent has failed to prove on record that the petitioner had himself abandoned his job and he was afforded reasonable opportunities of being heard rather his services were terminated by the respondent on the ground of alleged abandonment.

35. For the foregoing reasons, I arrive at an inescapable conclusion that the retrenchment of the petitioner was illegal, unjust and against the mandatory of the provisions of Sections 25-B, 25-F and 25-G of the Act. The termination of the petitioner is, thus, set aside and quashed. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall also be entitled to seniority and continuity in service. The petitioner is claiming all consequential benefits, back-wages and payment of over time charges. The petitioner is aged 30 years. There is no averment either in the claim petition or by way of tendering affidavit that the petitioner was not gainfully employed during the period of termination. Though, he submitted that he was at the verge of starvation having no source of income available with him. In my humble opinion a person aged 30 years would not remain without work and earn his livelihood for pretty long period of seven years with effect from 17.8.2015, the date of termination. On the other hand the respondent placed on record photograph (RW-1/C) alleging thereby that the petitioner is earning his livelihood by running shop/business. Hence, he is not entitled to any back-wages. Accordingly, both the issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 2.

36. In order to prove these issues no specific evidence has been led by the respondent which could go to show that as to how the present petition is not maintainable especially when it stand proved on record that the services of the petitioner have been terminated in contravention of the provisions of the Act. In the absence of any evidence issue no.3 is decided in favour of the petitioner and against the respondent.

RELIEF

37. As a sequel to my above discussion and findings on issues no.1 to 3, the application filed by the petitioner succeeds and is hereby allowed. Resultantly, the **respondent company is**

directed to re-instate the petitioner with seniority and continuity. However, the petitioner is not entitled to any back-wages. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Reference Number	:	85 of 2018
Instituted on	:	1.5.2018
Decided on	:	11.5.2022

Hitesh Kaushik *alias* Luckey s/o Shri Keshav Ram r/o Village & P.O. Batal, Tehsil Arki, District Solan, H.P. ...*Petitioner.*

VERSUS

The CEO/MD Sri Ram Hospital, 18-D, Sector-1, New Shimla, Shimla, H.P. ...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner	:	Shri Vikash Chauhan, Advocate
For Respondent	:	Shri Navlesh Verma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government, vide notification dated 28.2.2018, under section 10 of the Industrial Disputes Act, 1947 **(hereinafter referred to be as the Act),** for its legal adjudication, as under:

> **"Whether termination of services of Shri Hitesh Kaushik C/o Vikesh Chauhan, Chauhan Niwas, Lane-15, Sector-4, New Shimla, H.P. w.e.f. 6.1.2017 by the Chief Executive Officer/Managing Director Shri Ram Hospital, 18-D, Sector-1, New Shimla, Shimla -9 H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above management?"**

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Hitesh Kaushik **(hereinafter referred to be as**

the petitioner) has filed the statement of claim against Managing Director, Shri Ram Hospital, New Shimla Ltd **(hereinafter referred to be as respondent hospital).**

3. Key facts for the disposal of the present controversy are thus that the petitioner was employed as helper in the canteen of the respondent hospital in the year 2007 and side by side he was also given additional responsibilities/work of ward boy and domestic helper in the house. The petitioner was allowed to stay/reside at the hospital premises in the wake of multiple duties/obligations assigned to him. It is further averred that the services of the petitioner were orally terminated by the respondent hospital on 6-1-2017 without following the proper procedure of law. Neither any notice indicating the reasons for such termination has been issued to the petitioner nor conducted any enquiry against him. After his termination, the petitioner requested the respondent for his reengagement but of no use.

4. The following relief clause has been appended in the footnote of the claim petition:

> **"It is therefore most respectfully prayed that this Ld. Court be pleased to answer the reference in affirmative, awarding relief of reinstatement in service with retrospective effect along-with consequential relief of back-wages, continuity of service and allied service benefits in favour of the claimant/petitioner."**

5. The lis was resisted and contested by filing written reply on inter-alia preliminary objection qua maintainability has been raised.

6. On merits, it is contended that the petitioner was given no employment or the responsibility in the hospital. The petitioner was only a full time domestic help who was serving the respondent but for their personal works and kitchen work. The petitioner was sometimes and very occasionally called upon for helping the hospital canteen which was situated in the same premises, hence, there was no need for the respondent to terminate his services. The petitioner was involved in some criminal case and illegal activities where-after he left the job of his own. There is no relationship of employer and employee between the parties. It is therefore prayed that the claim petition may kindly be dismissed.

7. While filing rejoinder, the applicant controverted the averments made thereto in the reply and reaffirmed and reiterated those in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 31-12-2018.

1. Whether the termination of the services of the petitioner *w.e.f.* 6-1-2017 is voilative of the procedure laid down by the provisions of the Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to? ...*OPP.*

2. Whether the reference is not maintainable as alleged? If so to what effect? ...*OPR.*

3. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the Ld. Counsel for the parties and also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter, while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Partly Yes. The petitioner is entitled to lump-sum compensation.
Issue No. 2	:	No.
Relief	:	Reference allowed as per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1.

12. In order to substantiate its case, the petitioner namely Shri Hitesh Kaushik stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copy of work experience certificate (PW-1/B), salary certificate (PW-1/C) and daily dairy report (PW-1/D).

13. In cross-examination, he admitted that talks relating to his appointment had taken place at residence. He admitted that no appointment letter had ever issued to him. He denied that he used to work as domestic help with the respondent. He denied that an FIR was lodged against him for abduction in Police Station, New Shimla. He admitted that news item was published *vide* Mark X in the newspaper regarding an abduction. He denied that he was not employed in the hospital by the respondent.

14. In order to rebut, the respondent in support of their contention, existing in the reply, has relied upon the testimony of Shir Ankur Chauhan, Manging Partner of respondent hospital, who stepped into the witness box as (RW-1) and tendered into evidence his affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence report of newspaper Mark X.

15. In cross-examination, he denied that the petitioner was working with the respondent since 2007 to Jan., 2017. He further denied that the petitioner was working in the hospital canteen as well as the ward boy in the hospital. He denied to have issued salary certificate (PW-1/C) by the respondent. He denied that the services of the petitioner were terminated on 6-1-2017. He denied that the petitioner moved complaint (PW-1/B) before the Police.

16. Shri Vikas Chauhan, Ld. Counsel for the petitioner contended with all vehemence that the petitioner has been engaged as helper in the canteen of the respondent hospital in the year 2007 and side by side he was also given additional responsibilities/work of ward boy and domestic helper in the house. The petitioner had completed 240 working days with the respondent and his termination without any notice and payment of compensation is illegal and against the mandatory provisions of the Act. It is, therefore, prayed that the applicant may be reinstated in service with all the consequential service benefits including full back-wages.

17. Shri Navlesh Verma, Ld. Vice Counsel for the respondent strenuously argued that the petitioner was only a full time domestic help who was serving with the respondent for their personal works and kitchen work. The petitioner was never engaged as helper by the respondent hospital. There is no relationship of employer and employee between the parties. He further argued that the services of the petitioner were never terminated by the respondent who himself had

abandoned his job. Thus, he prayed that since the petitioner was employed only as domestic help, hence, he is not entitled to any relief from this Court.

18. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

19. The first and foremost question raised from the side of the respondent is that the petitioner is not an employee of the respondent hospital. The petitioner was engaged as a domestic servant in the residence of the Managing Director of the hospital and he was residing the same premises. There was no employment/responsibility was given to the petitioner. In fact, he was engaged as domestic help and was serving the respondent for their personal work and kitchen work. On the other hand, the petitioner has alleged that he was employed by the respondent hospital as a helper to work in the canteen and side by side to do the work of ward boy in the hospital.

20. Before, proceeding further, I would like to reproduce section 2(s) of the Act, which defines the workman as under:

"Section 2(s) of the Act, defines "workman" as under : "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led that dispute, but does not include any such person :

- **(i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or**
- **(ii) who is employed in the police service or as an officer or other employee of a prison; or**
- **(iii) who is employed mainly in a managerial or administrative capacity; or :**
- **(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature"**

21. The question whether an employee working part time is a "workman" within the meaning of section 2(s) of the Act came up before Hon'ble Delhi Court in an authority reported **as Kailash Chand Saigal vs. Om Prakash and others 2006 IX AD (Delhi) 158.** The workman was working as a sweeper for half an hour only in the morning. The question was whether an employee working parttime for such a short time was a "workman" or not? Hon'ble High Court held the employee to be a "workman" and observed as under :

"4. The Labour Court held that a part time employee was covered by the definition of workman as given in section 2(s) of the Industrial Disputes Act. The emphasis of petitioner has been that a part time employee of the nature of a Sweeper who only used to sweep the office in the morning say for half an hour and half an hour in the evening, could not be covered by section 2(s).

5. The issue of a parttime Sweeper had come before this Court in Coal India Ltd. Vs. P.O. Labour Court) and Others 2001 III AD (DELHI) 742 where the services of a part-

time Sweeper who used to get Rs.10/ per day for the part time work were terminated in the same fashion without assigning any reason. This Court observed as under : "The Labour Court has relied upon the definition of Section 2(s) of the Industrial Disputes Act, defining the workman and found that according to the said definition a parttime employee; will also be a workman as per Section 2(s) of the Act.. The Labour Court has also relied upon the judgments reported as State of Workman and othersVs. K.C. Dutta 1967; K. Ramachandran Vs. State of Kerala; Gurudarshan Sngh Vs. State of Punjab (1983) (1) SLJ 399 (1) SLJ 399; Kanubhai Maru Vs. N.K. Desai 1988I LLN 1004 and Yashwant Singh Yadav Vs. State of Rajasthan and Others 1987 LLR 96 to come to a conclusion that the definition of the workman is comprehensive and wide enough to include a parttime employee. The Labour Court further found that the part-time employee is covered by the definition; as per Section 2(s) of the Industrial Disputes Act. I am satisfied that the aforesaid finding of the Labour Court regarding the availability of the protection of Section 2 (s) and other cognate sections is legally sustainable and does not call for any interference. In particular I am in respectful agreement with the law laid down in Kanubhai Maru Vs. N.K. Desai 1988 (1) LLN 1004 by the Gujarat High Court where a parttime servant doing the work of a sweeper has hold to be a workman and the law laid down in Yashwant Singh Vs. State of Rajasthan and Others 1987 LLR 96 by Rajasthan High Court which held that Section 2(s) of the Industrial Disputes Act covers a part time employee also. It was admitted that the workman was employed since 21st of February, 1983 and worked till 31st of October, 1984 and there was no gap or absence in his duty and he had been continuously employed during the said period. The Labour Court held that having thus worked for more than a year, his services could not be terminated without complying with the Mandatory provisions of Section 25(F) of the Industrial disputes Act."

6. I consider that looking into the definition of section 2(s) and catena of judgments, a parttime workman is equally a workman and is entitled for protection available to a full time workman."

22. In the instant case, the workman/petitioner has been engaged as helper by the respondnet hospital in the canteen and for other ancillary work in the hospital as well as domestic help at the residence. The petitnioer was doing various kind of works which would clearly establish that the petitonier was fairly and squarely covered by the defination of "workman". The petitioner had worked with the respondent from the year 2007 till 18-8-2014, on monthly salary of ₹ 8000/-. It is duly established on record from the certificate issued by the respondent hospital ((PW-1/C), on their own letter pad. It is also not at all disputed that the petitioner had rendered service of more than seven years. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the above discussion, I am satisfied that the workman was terminated illegally and unjustifiably without complying with section 25 F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

23. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter.—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

24. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

25. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

26. Now, the question is as to what relief, the workman is entitled to? The Hon'ble Apex Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813,** Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

27. Similarly, the Hon'bel High Court of Dehli in another authority reported **as Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under :

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

28. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

29. Similarly, Their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413,** Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases *e.g.* Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

30. The Hon'ble Apex Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479,** wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:
>
> **"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."**

31. The petitioner had worked with the respondent as helper admitedly for seven years.

32. Considering the fact that the petitioner was a helper, I deem it proper that reinstatement would not be proper and instead compensation would be a better alternative. Considering the fact on the file, I deem it proper that compensation of ₹50,000/ would be appropriate and would meet

both ends of justice. I, accordingly, grant lump sum compensation of ₹ 50,000/ (Rupees Fifty Thousand only) to the workman, to be paid by the respondent hospital within two month of the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent hospital to the workman. This issue is accordingly, decided in favour of the workman and against the respodnent.

ISSUE NO. 2.

33. In order to prove this issue no specific evdeince has been led by the respdonent which could go to show as to show the reference is not maintainable. Moreover, in view of my findings on issue no.1, I find nothing wrong with this reference which is perfectably maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respodnent.

RELIEF

34. As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is awarded lump sum compensation of **₹ 50,000/- (Rupees Fifty Thousand only) to the workman, to be paid by the respondent hospital within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent hospital to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity,** leave encashment, EPF, ESI etc., if any, in accordance with law. The reference is answered in favour of the petitioner and against the respondent. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

35. The reference is answered in the aforesaid terms.

Ordered accordingly.

Announced in the open Court today this 11th day of May., 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number	:	74 of 2018
Instituted on	:	13-6-2018
Decided on	:	11-5-2022

Tara Chand c/o Vinod Kumar, r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. ...*Petitioner* .

Versus

The Factory Manager, Ultra Tech. Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. ...*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate
For respondent : Shri R.K. Khidtta, Advocate

AWARD

This is an usual claim petition instituted on behalf of Shri Tara Chand (hereinafter to be referred as the petitioner) against the Factory Manager, Ultratech (hereinafter to be referred as the respondent) filed under section 2-A of the Industrial Disputes Act, 19476 (hereinafter to be referred as the Act).

2. Material facts necessary for the disposal of the present claim petition are thus that the petition was employed as an Operator by the respondent on monthly salary of Rs. 10500/- w.e.f. 7.9.2010. The petitioner has completed 240 days in each calendar year. The petitioner is member of workers union, who has applied for its registration *vide* TRS No. 1511260 before the Registrar of Trade Union H.P., Himrus Building Cart Road Shimla. The worker union had submitted the memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 and thereby raised various lawful demands of the workers. The respondent company did not adhere to the lawful demands of the workers to be fulfilled by 15.10.2017, failing which the workers will be compelled to initiate lawful action/demonstration but the respondent company by getting annoyed, terminated the services of the petitioner *w.e.f.* 18.10.2017. The petitioner also filed the demand notice, the copy of which was sent to Labour Officer, Solan to which the conciliation proceedings are pending. The respondent without issuing any notice terminated the services of the petitioner. No retrenchment compensation was paid to him. The termination of the petitioner is illegal and void and the same is result of without complying with the mandatory provisions of the Act. The petitioner is entitled to all consequential service benefits including seniority, continuity and back-wages.

3. The following prayer clause has been appended in the footnote of the claim petition.

"It is therefore, most respectfully prayed that this Hon'ble Court/Tribunal be pleased to allow the petition of the applicant/petitioner by holding his retrenchment to be wholly improper and unjustified and consequentially holding the workman to be entitled to all service benefits including back-wages, seniority etc."

4. The lis was resisted and contested by the respondents filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come to the Court with clean hands, due to illegal act of the petitioner the respondent company suffered huge losses and no cause of action and gross violation of the provisions of the Act.

5. On merits, it is submitted that the petitioner was engaged as an Operator *w.e.f* 1.9.2012. The work and conduct of the petitioner during his service period never remained upto the mark as he indulged in illegal activities. The petitioner was a member of Hind Mazdoor Sabha, which is not registered. The demands raised through memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. No demand notice under section 2-K has been received by the appropriate government. The memorandums stood duly replied. The petitioner has filed the claim petition directly and as such the action on the part of the petitioner deserves to be dismissed. There is no violation of any of the provisions of the Act. The respondent has already paid the salary for

the month of October, 2017 and other legal dues to the petitioner which has been duly received by him. No conciliation proceedings were held by the Conciliation Officer. The petitioner is not entitled to any service benefits in view of the detailed reply filed hereinabove. It is therefore most respectfully prayed that the claim petition filed by the petitioner/workman against the respondent may kindly be dismissed with heavy cost.

6. No rejoinder has been filed.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 23.4.2019:

1. Whether the termination of the petitioner *w.e.f.* 18.10.2017 is in violation of the provisions of the Industrial Disputes Act as alleged. If so its effect thereto? ...*OPP.*

2. Whether the petition is not maintainable as the petitioner has approached this Court directly, as alleged? If so what effect? ...*OPR.*

3. Whether the petition is not maintainable as the petitioner is alleged to have suppressed material facts from this Court and not come with clean hands, as alleged? If so what effect? ...*OPR.*

4. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1	:	Yes
Issue No.2	:	No
Issue No.3	:	No
Relief	:	Application is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1.

11. Both these issues which are mutually exists and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. In order to substantiate its plea, the petitioner namely Tara Chand examined himself as (PW-1) and tendered into evidence his sworn-in affidavit (PW-1/A) wherein he has reiterated

almost all the averments, as stated in the claim petition. He also tendered in evidence termination letter Mark P-1, copy of demand notice Mark P-2, letter dated 24.10.2017 Mark P-3, demand charter Mark P-4, letter dated 10.10.2017 Mark P-5, statement before Conciliation Officer and proceedings dated 5.1.2018 and 15.2.2018 Mark P-6 to Mark P-8.

13. In cross-examination, he admitted that an appointment letter was issued at the time of employment. He denied that he was appointed on 1.9.2012 but volunteered that he was appointed on 1.9.2012. He admitted that bonus was being paid to them by the respondent. He denied that the demands raised on 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. He denied that he had not raised any demands before the Conciliation Officer. He denied that he is gainfully employed. He further denied that they had undertaken a strike in the year 2016 and 2017. He also denied that their work was not satisfactory while they were working in the company. He denied that he had never completed 240 days in any calendar year. He denied that his services were never terminated.

14. In order to rebut, the respondent has examined Shri Jai Parkash Singh, Manager HR as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of cancelled order due to strike Mark R-1 and undertaking given by the employee Mark R-2.

15. In cross-examination, he admitted that the petitioner was engaged by the respondent as operator since 1.9.2012 on monthly salary of Rs. 10500/-. He admitted that the petitioner had completed 240 days in each calendar year. He denied that the wages for the month of October 2017 was given to the petitioner. He denied that neither the petitioner was issued any notice nor conducted any enquiry. He denied that the petitioner was terminated orally on 18.10.2017.

16. At the very out-set, Shri Niranjan Verma, Ld. Counsel for the petitioner contended with all vehemence that termination of the services of the petitioner amounts to retrenchment. Such retrenchment without issuing any notice and conducting any enquiry is in gross violation of the provisions of the Act. The petitioner was not paid his due benefits and the respondent has adopted unfair labour practice. The retrenchment of the services of the petitioner is illegal, void and the same deserves to be quashed and set aside by ordering the reinstatement of the services of the petitioner.

17. *Per contra* Shri R.K Khidtta, Ld. Counsel for the respondent strenuously argued that the petitioner had resorted to unlawful activities such as demonstration/ Dharna under the garb of Hind Mazdoor Sabha Trade Union as a result of which the respondent company suffered huge losses. No reference has been received from the appropriate government. The petitioner has filed the present petition directly before this Court/Tribunal which is not maintainable. The respondent company has not violated the provisions of the Act.

18. I have given my best anxious considerable thought to the submissions of respective Counsel for the parties and also scrutinized the entire case record with minute care, and caution and circumspection.

19. Thus, from the careful examination of the case record, it is satisfactorily proved that the petitioner was engaged as an operator since 7.9.2010. The respondent company has claimed to be engaged on 1.9.2012, however, no strict proof in this regard was given by the respondent. More so, the witness examined by the respondent company (RW-1) has admitted that the services of the petitioner have been engaged on 7.9.2010. From this admission, it is admittedly proved on record that the petitioner had joined his duties with the respondent company on 7.9.2010 and worked as such till the date of his termination. According to the petitioner, his services were terminated *w.e.f.* 18.10.2017. Admittedly, the petitioner come within the definition of workman which is otherwise

not disputes from the side of the respondent. The defence raised from the side of the respondent that the services of the petitioner were disengaged because he had involved in illegal activities due to which the respondent company had suffered losses. Again at the cost of repetition, the respondent company has failed to substantiate by placing on record any such documentary proof which could go to show that the petitioner had involved in illegal activities which caused losses to the company.

20. Now, the question which arises for determination, before this Court as to whether in terminating the services of the petitioner, the respondent has violated the provisions of the Act or not. It is an admitted position on record that the petitioner had worked with the respondent company *w.e.f.* 7.9.2010 till 18.10.2017 and had completed 240 working days in each calendar year. It is further the admitted position on record that before terminating the services of the petitioner neither any enquiry was conducted nor he was paid retrenchment compensation. Such being the position, it stand proved on record that the workman/petitioner had worked for the required 240 days of working in the period of twelve calendar months preceding the date of termination, he is entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are attracted in this case. It is also admitted that before retrenching the services of the petitioner neither any notice nor compensation has been paid to the petitioner as provided under section 25-F of the Act. Then, it stood clearly established from the admission made by the respondent (RW-1) that the petitioner had worked for 240 days in the preceding twelve calendar months prior to his disengagement. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

> **"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:**
>
> **(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
>
> **(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."**

21. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

> **"25B. Definition of continuous service. For the purposes of this Chapter.—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;**

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

22. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The notice terminating the services of the petitioner *vide* oral termination dated 18.10.2017 is not in conformity with Section 25-F of the Act. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

23. The petitoiner in his affidavit (PW-1/A) has maintained that the persons junior to him have been retained by the respodnent company in vioaltion of the provisions of section 25-G of the Act but such depositoin on the part of the petitioner would not be sufficient. He has misrebly failed to prove on record by leading documentary evidence that the person junior to him are still working withthe respodnent company. Therefore, in the absence of any evidence on record, it cannot be said that the respondnet has violated the provisoins of section 25-G of the Act.

24. It is, thus, held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F of the Act. The termination of the petitioner is, thus, set aside and quashed. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall be entitled to seniority and continuity in service from the date of his disengagement.

25. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In case titled as **Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, (2009) 1 SCC 20,** the Hon'ble Apex Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Apex Court in case titled as M/s Ritu Marbals Vs. Prabhakant Shukla 2010 (1) SLJ S.C 70,** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

26. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in case titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma, (2005) 2 Supreme Court Cases, 363** that:

16. "When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim"

27. With regard to the merits of the case, there is no denying fact as evident from the testimony of Jai Prakash, Manager HR (RW-1) that the petitioner was offered employment or engagement as an operator *w.e.f.* 7.9.2010 on monthly salary and he had worked as such continuously in such capacity till the time of his termination *i.e* 18.10.2017. The respondent witness also admitted the fact that the petitioner had completed satisfactorily 240 working days in each calendar year. The respondent witness also admitted that neither the petitioner was issued any show cause notice nor subjected to any domestic enquiry. The admissions on the part of the respondent witness are strengthening the case of the petitioner bolstered with double strength as all the averments made thereto in the petition stood duly admitted. The only contention raised from the side of the respondent that the company had suffered losses due to the act and conduct of the petitioner. To substantiate the said plea, the respondent placed reliance of document Mark R-1 *i.e* cancel order due to strike in November, 2017. No witness has been examined to prove the losses. A document which is simply marked and not exhibited on record in accordance with law cannot be looked or peeped into for any purpose. In my humble opinion the respondent company has miserably failed to substantiate their plea. In any case, for the same of convenience, it is admitted that the respondent company had incurred losses, even, though I failed to understand that what prevented the respondent company to comply the mandatory requirement of sections 25-B and 25-F of the Act.

28. For the foregoing reasons, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in the stated legal position mentioned herein *ibid*, I find that the respondent was not at all justified in passing the termination order dated 18.10.2017. In view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is entitled for reinstatement in service with continuity and seniority. However, the petitioner is not entitled to any back-wages. Hence, issue no.1 is decided in favour of the petitioner and against the respondent.

ISSUES NO.2 & 3.

29. Both these issues which are mutually exist and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

30. In order to prove these issues no specific evidence has been led by the respondent which could go to show that as to how the present petition is not maintainable especially when it stand proved on record that the services of the petitioner have been terminated in contravention of the provisions of the Act. Furthermore, the respondent has also failed to prove on record that the petitioner has suppressed material facts from this Court and not come to this Court with clean hands. In the absence of any evidence both these issues are decided in favour of the petitioner and against the respondent.

RELIEF

31. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, the petitioner is ordered to be reengaged in service forthwith subject to seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not

gainfully employed after his termination. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to record.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number	:	75 of 2018
Instituted on	:	13.6.2018
Decided on	:	11.5.2022

Shukra Malik c/o Vinod Kumar r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. *...Petitioner* .

VERSUS

The Factory Manager, Ultra Tech. Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. *...Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate
For respondent : Shri R.K. Khidtta, Advocate

AWARD

This is an usual claim petition instituted on behalf of Shri Shukra Malik (hereinafter to be referred as the petitioner) against the Factory Manager, Ultratech (hereinafter to be referred as the respondent) filed under section 2-A of the Industrial Disputes Act, 19476 (hereinafter to be referred as the Act).

2. Material facts necessary for the disposal of the present claim petition are thus that the petition was employed as an Operator by the respondent on monthly salary of Rs. 14000/- *w.e.f.* 1.10.2014. The petitioner has completed 240 days in each calendar year. The petitioner is member of workers union, who has applied for its registration *vide* TRS No. 1511260 before the Registrar of Trade Union H.P., Himrus Building Cart Road Shimla. The worker union had submitted the memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 and thereby raised various lawful demands of the workers. The respondent company did not adhere to the lawful demands of the workers to be fulfilled by 15.10.2017, failing which the workers will be compelled to initiate lawful action/demonstration but the respondent company by getting annoyed, terminated the services of the petitioner *w.e.f.* 18.10.2017. The petitioner also filed the demand notice, the copy of which was

sent to Labour Officer, Solan to which the conciliation proceedings are pending. The respondent without issuing any notice terminated the services of the petitioner. No retrenchment compensation was paid to him. The termination of the petitioner is illegal and void and the same is result of without complying with the mandatory provisions of the Act. The petitioner is entitled to all consequential service benefits including seniority, continuity and back-wages.

3. The following prayer clause has been appended in the footnote of the claim petition.

"It is therefore, most respectfully prayed that this Hon'ble Court/Tribunal be pleased to allow the petition of the applicant/petitioner by holding his retrenchment to be wholly improper and unjustified and consequentially holding the workman to be entitled to all service benefits including back-wages, seniority etc."

4. The lis was resisted and contested by the respondents filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come to the Court with clean hands, due to illegal act of the petitioner the respondent company suffered huge losses and no cause of action and gross violation of the provisions of the Act.

5. On merits, it is submitted that the petitioner was engaged as casual worker and was performing temporary work in the factory. The demands raised by Mazdoor Sabha through memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. No demand notice under section 2-K has been received by the appropriate government. The memorandums stood duly replied. The petitioner has filed the claim petition directly and as such the action on the part of the petitioner deserves to be dismissed. There is no violation of any of the provisions of the Act. The respondent has already paid the salary for the month of October, 2017 and other legal dues to the petitioner which has been duly received by him. No conciliation proceedings were held by the Conciliation Officer. The petitioner is not entitled to any service benefits in view of the detailed reply filed hereinabove. It is therefore most respectfully prayed that the claim petition filed by the petitioner/workman against the respondent may kindly be dismissed with heavy cost.

6. No rejoinder has been filed.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination vide Court order dated 23.4.2019:

1. Whether the termination of the petitioner *w.e.f.* 18.10.2017 is in violation of the provisions of the Industrial Disputes Act as alleged. If so its effect thereto? ...*OPP.*

2. Whether the petition is not maintainable as the petitioner has approached this Court directly, as alleged? If so what effect? ...*OPR.*

3. Whether the petition is not maintainable as the petitioner is alleged to have suppressed material facts from this Court and not come with clean hands, as alleged? If so what effect? ...*OPR.*

4. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Yes
Issue No. 2	:	No
Issue No. 3	:	No
Relief	:	Application is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. Both these issues which are mutually exists and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. In order to substantiate its plea, the petitioner namely Shukra Malik examined himself as (PW-1) and tendered into evidence his sworn-in affidavit (PW-1/A) wherein he has reiterated almost all the averments, as stated in the claim petition. He also tendered in evidence copy of demand notice Mark P-1, letter dated 24.10.2017 Mark P-2, demand charter Mark P-3, letter dated 10.10.2017 Mark P-4, statement before Conciliation Officer and proceedings dated 5.1.2018 and 15.2.2018 Mark P-5 to Mark P-7.

13. In cross-examination, he admitted that an appointment letter was issued at the time of employment. He denied that he was never appointed by the respondent. He denied that he was doing the causal work in the company. He denied that the demands raised on 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. He denied that he had not raised any demands before the Conciliation Officer. He denied that he is gainfully employed. He further denied that they had undertaken a strike in the year 2016 and 2017. He also denied that their work was not satisfactory while they were working in the company. He denied that he had never completed 240 days in any calendar year. He denied that his services were never terminated.

14. In order to rebut, the respondent has examined Shri Jai Parkash Singh, Manager HR as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of cancelled order due to strike Mark R-1 and undertaking given by the employee Mark R-2.

15. In cross-examination, he admitted that the petitioner was engaged by the respondent as operator since 1.10.2014 on monthly salary of Rs. 14000/-. He admitted that the petitioner had completed 240 days in each calendar year. He denied that the wages for the month of October 2017 was given to the petitioner. He denied that neither the petitioner was issued any notice nor conducted any enquiry. He denied that the petitioner was terminated orally on 18.10.2017.

16. At the very out-set, Shri Niranjan Verma, Ld. Counsel for the petitioner contended with all vehemence that termination of the services of the petitioner amounts to retrenchment. Such retrenchment without issuing any notice and conducting any enquiry is in gross violation of the provisions of the Act. The petitioner was not paid his due benefits and the respondent has adopted unfair labour practice. The retrenchment of the services of the petitioner is illegal, void and the

same deserves to be quashed and set aside by ordering the reinstatement of the services of the petitioner.

17. *Per contra* Shri R.K Khidtta, Ld. Counsel for the respondent strenuously argued that the petitioner had resorted to unlawful activities such as demonstration/ Dharna under the garb of Hind Mazdoor Sabha Trade Union as a result of which the respondent company suffered huge losses. NO reference has been received from the appropriate government. The petitioner has filed the present petition directly before this Court/Tribunal which is not maintainable. The respondent company has not violated the provisions of the Act.

18. I have given my best anxious considerable thought to the submissions of respective Counsel for the parties and also scrutinized the entire case record with minute care, and caution and circumspection.

19. Thus, from the careful examination of the case record, it is satisfactorily proved that the petitioner was engaged as an operator since 1.10.2014. The respondent company has claimed that the petitioner was engaged as casual worker, however, no strict proof in this regard was given by the respondent. More so, the witness examined by the respondent company (RW-1) has admitted that the services of the petitioner have been engaged on 1.10.2014 as operator. From this admission, it is admittedly proved on record that the petitioner had joined his duties with the respondent company on 1.10.2014 and worked as such till the date of his termination. According to the petitioner, his services were terminated *w.e.f.* 18.10.2017. Admittedly, the petitioner come within the definition of workman which is otherwise not disputes from the side of the respondent. The defence raised from the side of the respondent that the services of the petitioner were disengaged because he had involved in illegal activities due to which the respondent company had suffered losses. Again at the cost of repetition, the respondent company has failed to substantiate by placing on record any such documentary proof which could go to show that the petitioner had involved in illegal activities which caused losses to the company.

20. Now, the question which arises for determination, before this Court as to whether in terminating the services of the petitioner, the respondent has violated the provisions of the Act or not. It is an admitted position on record that the petitioner had worked with the respondent company *w.e.f.* 1.10.2014 till 18.10.2017 and had completed 240 working days in each calendar year. It is further the admitted position on record that before terminating the services of the petitioner neither any enquiry was conducted nor he was paid retrenchment compensation. Such being the position, it stand proved on record that the workman/petitioner had worked for the required 240 days of working in the period of twelve calendar months preceding the date of termination, he is entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are attracted in this case. It is also admitted that before retrenching the services of the petitioner neither any notice nor compensation has been paid to the petitioner as provided under section 25-F of the Act. Then, it stood clearly established from the admission made by the respondent (RW-1) that the petitioner had worked for 240 days in the preceding twelve calendar months prior to his disengagement. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

> **"25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:**

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter.—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

22. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The notice terminating the services of the petitioner *vide* oral termination dated 18.10.2017 is not in conformity with Section 25-F of the Act. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

23. The petitoiner in his affidavit (PW-1/A) has maintained that the persons junior to him have been retained by the respodnent company in vioaltion of the provisions of section 25-G of the Act but such depositoin on the part of the petitioner would not be sufficient. He has misrebly failed to prove on record by leading documentary evidence that the person junior to him are still working withthe respodnent company. Therefore, in the absence of any evidence on record, it cannot be said that the respondnet has violated the provisoins of section 25-G of the Act.

24. It is, thus, held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F of the Act. The termination of the petitioner is, thus, set aside and quashed. The respondent is directed to re-engage the petitioner forthwith on the same

post. The petitioner shall be entitled to seniority and continuity in service from the date of his disengagement.

25. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In case titled as **Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, (2009) 1 SCC 20,** the Hon'ble Apex Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Apex Court in case titled as M/s Ritu Marbals Vs. Prabhakant Shukla 2010 (1) SLJ S.C 70,** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

26. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in case titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma, (2005) 2 Supreme Court Cases, 363** that:

> **16. "When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim"**

27. With regard to the merits of the case, there is no denying fact as evident from the testimony of Jai Prakash, Manager HR (RW-1) that the petitioner was offered employment or engagement as an operator *w.e.f.* 1.10.2014 on monthly salary and he had worked as such continuously in such capacity till the time of his termination *i.e* 18.10.2017. The respondent witness also admitted the fact that the petitioner had completed satisfactorily 240 working days in each calendar year. The respondent witness also admitted that neither the petitioner was issued any show cause notice nor subjected to any domestic enquiry. The admissions on the part of the respondent witness are strengthening the case of the petitioner bolstered with double strength as all the averments made thereto in the petition stood duly admitted. The only contention raised from the side of the respondent that the company had suffered losses due to the act and conduct of the petitioner. To substantiate the said plea, the respondent placed reliance of document Mark R-1 *i.e* cancel order due to strike in November, 2017. No witness has been examined to prove the losses. A document which is simply marked and not exhibited on record in accordance with law cannot be looked or peeped into for any purpose. In my humble opinion the respondent company has miserably failed to substantiate their plea. In any case, for the same of convenience, it is admitted that the respondent company had incurred losses, even, though I failed to understand that what prevented the respondent company to comply the mandatory requirement of sections 25-B and 25-F of the Act.

28. For the foregoing reasons, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in the stated legal position mentioned herein *ibid*, I find that the respondent was not at all justified in passing the termination order dated 18.10.2017. In view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is entitled for reinstatement in service with continuity and seniority. However, the petitioner is not entitled to any back-wages. Hence, issue no.1 is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3.

29. Both these issues which are mutually exist and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

30. In order to prove these issues no specific evidence has been led by the respondent which could go to show that as to how the present petition is not maintainable especially when it stand proved on record that the services of the petitioner have been terminated in contravention of the provisions of the Act. Furthermore, the respondent has also failed to prove on record that the petitioner has suppressed material facts from this Court and not come to this Court with clean hands. In the absence of any evidence both these issues are decided in favour of the petitioner and against the respondent.

RELIEF

31. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, the petitioner is ordered to be reengaged in service forthwith subject to seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to record.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA.**

Application Number	:	76 of 2018
Instituted on	:	13.6.2018
Decided on	:	11.5.2022

Jagdish Chander c/o Vinod Kumar, r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. ...*Petitioner.*

VERSUS

The Factory Manager, Ultra Tech. Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. ..*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate
For respondent : Shri R.K Khidtta, Advocate

AWARD

This is an usual claim petition instituted on behalf of Shri Jagdish Chander (hereinafter to be referred as the petitioner) against the Factory Manager, Ultratech (hereinafter to be referred as the respondent) filed under section 2-A of the Industrial Disputes Act, 19476 (hereinafter to be referred as the Act).

2. Material facts necessary for the disposal of the present claim petition are thus that the petition was employed as an Operator by the respondent on monthly salary of Rs. 15900/- *w.e.f.* 28.7.2010. The petitioner has completed 240 days in each calendar year. The petitioner is member of workers union, who has applied for its registration *vide* TRS No. 1511260 before the Registrar of Trade Union H.P., Himrus Building Cart Road Shimla. The worker union had submitted the memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 and thereby raised various lawful demands of the workers. The respondent company did not adhere to the lawful demands of the workers to be fulfilled by 15.10.2017, failing which the workers will be compelled to initiate lawful action/demonstration but the respondent company by getting annoyed, terminated the services of the petitioner *w.e.f.* 18.10.2017. The petitioner also filed the demand notice, the copy of which was sent to Labour Officer, Solan to which the conciliation proceedings are pending. The respondent without issuing any notice terminated the services of the petitioner. No retrenchment compensation was paid to him. The termination of the petitioner is illegal and void and the same is result of without complying with the mandatory provisions of the Act. The petitioner is entitled to all consequential service benefits including seniority, continuity and back-wages.

3. The following prayer clause has been appended in the footnote of the claim petition.

"It is therefore, most respectfully prayed that this Hon'ble Court/Tribunal be pleased to allow the petition of the applicant/petitioner by holding his retrenchment to be wholly improper and unjustified and consequentially holding the workman to be entitled to all service benefits including back-wages, seniority etc."

4. The lis was resisted and contested by the respondents filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come to the Court with clean hands, due to illegal act of the petitioner the respondent company suffered huge losses and no cause of action and gross violation of the provisions of the Act.

5. On merits, it is submitted that the petitioner was engaged as an Operator *w.e.f* 1.4.2012. The work and conduct of the petitioner during his service period never remained upto the mark as he indulged in illegal activities. The petitioner was a member of Hind Mazdoor Sabha, which is not registered. The demands raised through memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. No demand notice under section 2-K has been received by the appropriate government. The memorandums stood duly replied. The petitioner has filed the claim petition directly and as such the action on the part of the petitioner deserves to be dismissed. There is no violation of any of the provisions of the Act. The respondent has already paid the salary for the month of October, 2017 and other legal dues to the petitioner which has been duly received by him. No conciliation proceedings were held by the Conciliation Officer. The petitioner is not entitled to any service benefits in view of the detailed reply filed hereinabove. It is therefore most respectfully prayed that the claim petition filed by the petitioner/workman against the respondent may kindly be dismissed with heavy cost.

6. No rejoinder has been filed.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 23.4.2019:

1. Whether the termination of the petitioner *w.e.f.* 18.10.2017 is in violation of the provisions of the Industrial Disputes Act as alleged. If so its effect thereto? ...*OPP.*

2. Whether the petition is not maintainable as the petitioner has approached this Court directly, as alleged? If so what effect? ...*OPR.*

3. Whether the petition is not maintainable as the petitioner is alleged to have suppressed material facts from this Court and not come with clean hands, as alleged? If so what effect? ...*OPR.*

4. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Yes
Issue No. 2	:	No
Issue No. 3	:	No
Relief	:	Application is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. Both these issues which are mutually exists and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. In order to substantiate its plea, the petitioner namely Jagdish Chander examined himself as (PW-1) and tendered into evidence his sworn-in affidavit (PW-1/A) wherein he has reiterated almost all the averments, as stated in the claim petition. He also tendered in evidence termination letter Mark P-1, copy of demand notice Mark P-2, letter dated 24.10.2017 Mark P-3, demand charter Mark P-4, letter dated 10.10.2017 Mark P-5, statement before Conciliation Officer and proceedings dated 5.1.2018 and 15.2.2018 Mark P-6 to Mark P-8.

13. In cross-examination, he admitted that an appointment letter was issued at the time of employment. He denied that he was appointed on 1.4.2012 but volunteered that he was appointed

on 7.9.2010. He admitted that bonus was being paid to them by the respondent. He denied that the demands raised on 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. He denied that he had not raised any demands before the Conciliation Officer. He denied that he is gainfully employed. He further denied that they had undertaken a strike in the year 2016 and 2017. He also denied that their work was not satisfactory while they were working in the company. He denied that he had never completed 240 days in any calendar year. He denied that his services were never terminated.

14. In order to rebut, the respondent has examined Shri Jai Parkash Singh, Manager HR as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of cancelled order due to strike Mark R-1 and undertaking given by the employee Mark R-2.

15. In cross-examination, he admitted that the petitioner was engaged by the respondent as operator since 28.7.2010 on monthly salary of Rs. 15900/-. He admitted that the petitioner had completed 240 days in each calendar year. He denied that the wages for the month of October 2017 was given to the petitioner. He denied that neither the petitioner was issued any notice nor conducted any enquiry. He denied that the petitioner was terminated orally on 18.10.2017.

16. At the very out-set, Shri Niranjan Verma, Ld. Counsel for the petitioner contended with all vehemence that termination of the services of the petitioner amounts to retrenchment. Such retrenchment without issuing any notice and conducting any enquiry is in gross violation of the provisions of the Act. The petitioner was not paid his due benefits and the respondent has adopted unfair labour practice. The retrenchment of the services of the petitioner is illegal, void and the same deserves to be quashed and set aside by ordering the reinstatement of the services of the petitioner.

17. *Per contra* Shri R.K Khidtta, Ld. Counsel for the respondent strenuously argued that the petitioner had resorted to unlawful activities such as demonstration/ Dharna under the garb of Hind Mazdoor Sabha Trade Union as a result of which the respondent company suffered huge losses. No reference has been received from the appropriate government. The petitioner has filed the present petition directly before this Court/Tribunal which is not maintainable. The respondent company has not violated the provisions of the Act.

18. I have given my best anxious considerable thought to the submissions of respective Counsel for the parties and also scrutinized the entire case record with minute care, and caution and circumspection.

19. Thus, from the careful examination of the case record, it is satisfactorily proved that the petitioner was engaged as an operator since 28.7.2010. The respondent company has claimed to be engaged on 1.4.2012, however, no strict proof in this regard was given by the respondent. More so, the witness examined by the respondent company (RW-1) has admitted that the services of the petitioner have been engaged on 28.7.2010. From this admission, it is admittedly proved on record that the petitioner had joined his duties with the respondent company on 28.7.2010 and worked as such till the date of his termination. According to the petitioner, his services were terminated w.e.f. 18.10.2017. Admittedly, the petitioner come within the definition of workman which is otherwise not disputes from the side of the respondent. The defence raised from the side of the respondent that the services of the petitioner were disengaged because he had involved in illegal activities due to which the respondent company had suffered losses. Again at the cost of repetition, the respondent company has failed to substantiate by placing on record any such documentary proof which could go to show that the petitioner had involved in illegal activities which caused losses to the company.

20. Now, the question which arises for determination, before this Court as to whether in terminating the services of the petitioner, the respondent has violated the provisions of the Act or not. It is an admitted position on record that the petitioner had worked with the respondent company w.e.f. 28.7.2010 till 18.10.2017 and had completed 240 working days in each calendar year. It is further the admitted position on record that before terminating the services of the petitioner neither any enquiry was conducted nor he was paid retrenchment compensation. Such being the position, it stand proved on record that the workman/petitioner had worked for the required 240 days of working in the period of twelve calendar months preceding the date of termination, he is entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are attracted in this case. It is also admitted that before retrenching the services of the petitioner neither any notice nor compensation has been paid to the petitioner as provided under section 25-F of the Act. Then, it stood clearly established from the admission made by the respondent (RW-1) that the petitioner had worked for 240 days in the preceding twelve calendar months prior to his disengagement. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

> **"25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:**
>
> **(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
>
> **(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."**

21. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

> **"25B. Definition of continuous service. For the purposes of this Chapter.—**(1) a **workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;**
>
> **(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-**

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

22. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The notice terminating the services of the petitioner *vide* oral termination dated 18.10.2017 is not in conformity with Section 25-F of the Act. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

23. The petitoiner in his affidavit (PW-1/A) has maintained that the persons junior to him have been retained by the respodnent company in vioaltion of the provisions of section 25-G of the Act but such depositoin on the part of the petitioner would not be sufficient. He has misrebly failed to prove on record by leading documentary evidence that the person junior to him are still working withthe respodnent company. Therefore, in the absence of any evidence on record, it cannot be said that the respondnet has violated the provisoins of section 25-G of the Act.

24. It is, thus, held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F of the Act. The termination of the petitioner is, thus, set aside and quashed. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall be entitled to seniority and continuity in service from the date of his disengagement.

25. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In case titled as **Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, (2009) 1 SCC 20,** the Hon'ble Apex Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Apex Court in case titled as M/s Ritu Marbals Vs. Prabhakant Shukla 2010 (1) SLJ S.C 70,** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

26. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in case titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma, (2005) 2 Supreme Court Cases, 363** that:

16. "When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim"

27. With regard to the merits of the case, there is no denying fact as evident from the testimony of Jai Prakash, Manager HR (RW-1) that the petitioner was offered employment or engagement as an operator *w.e.f.* 28.7.2010 on monthly salary and he had worked as such continuously in such capacity till the time of his termination *i.e* 18.10.2017. The respondent witness also admitted the fact that the petitioner had completed satisfactorily 240 working days in each calendar year. The respondent witness also admitted that neither the petitioner was issued any show cause notice nor subjected to any domestic enquiry. The admissions on the part of the respondent witness are strengthening the case of the petitioner bolstered with double strength as all the averments made thereto in the petition stood duly admitted. The only contention raised from the side of the respondent that the company had suffered losses due to the act and conduct of the petitioner. To substantiate the said plea, the respondent placed reliance of document Mark R-1 *i.e* cancel order due to strike in November, 2017. No witness has been examined to prove the losses. A document which is simply marked and not exhibited on record in accordance with law cannot be looked or peeped into for any purpose. In my humble opinion the respondent company has miserably failed to substantiate their plea. In any case, for the same of convenience, it is admitted that the respondent company had incurred losses, even, though I failed to understand that what prevented the respondent company to comply the mandatory requirement of sections 25-B and 25-F of the Act.

28. For the foregoing reasons, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in the stated legal position mentioned herein *ibid*, I find that the respondent was not at all justified in passing the termination order dated 18.10.2017. In view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is entitled for reinstatement in service with continuity and seniority. However, the petitioner is not entitled to any back-wages. Hence, issue no.1 is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3.

29. Both these issues which are mutually exist and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

30. In order to prove these issues no specific evidence has been led by the respondent which could go to show that as to how the present petition is not maintainable especially when it stand proved on record that the services of the petitioner have been terminated in contravention of the provisions of the Act. Furthermore, the respondent has also failed to prove on record that the petitioner has suppressed material facts from this Court and not come to this Court with clean hands. In the absence of any evidence both these issues are decided in favour of the petitioner and against the respondent.

RELIEF

31. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, the petitioner is ordered to be reengaged in service forthwith subject to seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to record.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number	:	77 of 2018
Instituted on	:	30.6.2018
Decided on	:	11.5.2022

Pawan Vijay c/o Vinod Kumar, r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. ...*Petitioner* .

VERSUS

The Factory Manager, Ultra Tech. Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. ...*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate
For respondent : Shri R.K. Khidtta, Advocate

AWARD

This is an usual claim petition instituted on behalf of Shri Pawan Vijay (hereinafter to be referred as the petitioner) against the Factory Manager, Ultratech (hereinafter to be referred as the respondent) filed under section 2-A of the Industrial Disputes Act, 19476 (hereinafter to be referred as the Act).

2. Material facts necessary for the disposal of the present claim petition are thus that the petition was employed as an Operator by the respondent on monthly salary of Rs. 10200/- *w.e.f.* 1.5.2010. The petitioner has completed 240 days in each calendar year. The petitioner is member of workers union, who has applied for its registration *vide* TRS No. 1511260 before the Registrar of Trade Union H.P., Himrus Building Cart Road Shimla. The worker union had submitted the memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 and thereby raised various lawful demands of the workers. The respondent company did not adhere to the lawful demands of the workers to be fulfilled by 15.10.2017, failing which the workers will be compelled to initiate lawful action/demonstration but the respondent company by getting annoyed, terminated the services of the petitioner *w.e.f.* 18.10.2017. The petitioner also filed the demand notice, the copy of which was sent to Labour Officer, Solan to which the conciliation proceedings are pending. The respondent without issuing any notice terminated the services of the petitioner. No retrenchment compensation was paid to him. The termination of the petitioner is illegal and void and the same is result of without complying with the mandatory provisions of the Act. The petitioner is entitled to all consequential service benefits including seniority, continuity and back-wages.

3. The following prayer clause has been appended in the footnote of the claim petition.

"It is therefore, most respectfully prayed that this Hon'ble Court/Tribunal be pleased to allow the petition of the applicant/petitioner by holding his retrenchment to be wholly improper and unjustified and consequentially holding the workman to be entitled to all service benefits including back-wages, seniority etc."

4. The lis was resisted and contested by the respondents filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come to the Court with clean hands, due to illegal act of the petitioner the respondent company suffered huge losses and no cause of action and gross violation of the provisions of the Act.

5. On merits, it is submitted that the work and conduct of the petitioner during his service period never remained upto the mark as he indulged in illegal activities. The petitioner was a member of Hind Mazdoor Sabha, which is not registered. The demands raised through memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. No demand notice under section 2-K has been received by the appropriate government. The memorandums stood duly replied. The petitioner has filed the claim petition directly and as such the action on the part of the petitioner deserves to be dismissed. There is no violation of any of the provisions of the Act. The respondent has already paid the salary for the month of October, 2017 and other legal dues to the petitioner which has been duly received by him. No conciliation proceedings were held by the Conciliation Officer. The petitioner is not entitled to any service benefits in view of the detailed reply filed hereinabove. It is therefore most respectfully prayed that the claim petition filed by the petitioner/workman against the respondent may kindly be dismissed with heavy cost.

6. No rejoinder has been filed.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 23.4.2019:

1. Whether the termination of the petitioner *w.e.f.* 18.10.2017 is in violation of the provisions of the Industrial Disputes Act as alleged. If so its effect thereto? ...*OPP.*

2. Whether the petition is not maintainable as the petitioner has approached this Court directly, as alleged? If so what effect? ...*OPR.*

3. Whether the petition is not maintainable as the petitioner is alleged to have suppressed material facts from this Court and not come with clean hands, as alleged? If so what effect? ...*OPR.*

4. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Yes
Issue No. 2	:	No
Issue No. 3	:	No.
Relief	:	Application is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1.

11. Both these issues which are mutually exists and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. In order to substantiate its plea, the petitioner namely Ajay Kumar examined himself as (PW-1) and tendered into evidence his sworn-in affidavit (PW-1/A) wherein he has reiterated almost all the averments, as stated in the claim petition. He also tendered in evidence termination letter Mark P-1, copy of demand notice Mark P-2, letter dated 24.10.2017 Mark P-3, demand charter Mark P-4, letter dated 10.10.2017 Mark P-5, statement before Conciliation Officer and proceedings dated 5.1.2018 and 15.2.2018 Mark P-6 to Mark P-8.

13. In cross-examination, he admitted that an appointment letter was issued at the time of employment. He denied that the demands raised on 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. He denied that he had not raised any demands before the Conciliation Officer. He denied that he is gainfully employed. He further denied that they had undertaken a strike in the year 2016 and 2017. He also denied that their work was not satisfactory while they were working in the company. He denied that he had never completed 240 days in any calendar year. He denied that his services were never terminated.

14. In order to rebut, the respondent has examined Shri Jai Parkash Singh, Manager HR as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of cancelled order due to strike Mark R-1 and undertaking given by the employee Mark R-2.

15. In cross-examination, he admitted that the petitioner was engaged by the respondent as operator since 1.5.2010 on monthly salary of Rs. 10200/-. He admitted that the petitioner had completed 240 days in each calendar year. He denied that the wages for the month of October 2017 was given to the petitioner. He denied that neither the petitioner was issued any notice nor conducted any enquiry. He denied that the petitioner was terminated orally on 18.10.2017.

16. At the very out-set, Shri Niranjan Verma, Ld. Counsel for the petitioner contended with all vehemence that termination of the services of the petitioner amounts to retrenchment. Such retrenchment without issuing any notice and conducting any enquiry is in gross violation of the provisions of the Act. The petitioner was not paid his due benefits and the respondent has adopted unfair labour practice. The retrenchment of the services of the petitioner is illegal, void and the same deserves to be quashed and set aside by ordering the reinstatement of the services of the petitioner.

17. *Per contra* Shri R.K Khidtta, Ld. Counsel for the respondent strenuously argued that the petitioner had resorted to unlawful activities such as demonstration/ Dharna under the garb of Hind Mazdoor Sabha Trade Union as a result of which the respondent company suffered huge losses. NO reference has been received from the appropriate government. The petitioner has filed the present petition directly before this Court/Tribunal which is not maintainable. The respondent company has not violated the provisions of the Act.

18. I have given my best anxious considerable thought to the submissions of respective Counsel for the parties and also scrutinized the entire case record with minute care, and caution and circumspection.

19. Thus, from the careful examination of the case record, it is satisfactorily proved that the petitioner was engaged as an operator since 1.5.2010. More so, the witness examined by the respondent company (RW-1) has admitted that the services of the petitioner have been engaged on 1.5.2010. From this admission, it is admittedly proved on record that the petitioner had joined his duties with the respondent company on 1.5.2010 and worked as such till the date of his termination. According to the petitioner, his services were terminated *w.e.f.* 18.10.2017. Admittedly, the petitioner come within the definition of workman which is otherwise not disputes from the side of the respondent. The defence raised from the side of the respondent that the services of the petitioner were disengaged because he had involved in illegal activities due to which the respondent company had suffered losses. Again at the cost of repetition, the respondent company has failed to substantiate by placing on record any such documentary proof which could go to show that the petitioner had involved in illegal activities which caused losses to the company.

20. Now, the question which arises for determination, before this Court as to whether in terminating the services of the petitioner, the respondent has violated the provisions of the Act or not. It is an admitted position on record that the petitioner had worked with the respondent company *w.e.f.* 1.5.2010 till 18.10.2017 and had completed 240 working days in each calendar year. It is further the admitted position on record that before terminating the services of the petitioner neither any enquiry was conducted nor he was paid retrenchment compensation. Such being the position, it stand proved on record that the workman/petitioner had worked for the required 240 days of working in the period of twelve calendar months preceding the date of termination, he is entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are attracted in this case. It is also admitted that before retrenching the services of the petitioner neither any notice nor compensation has been paid to the petitioner as provided under section 25-F of the Act. Then, it stood clearly established from the admission made by the respondent (RW-1) that the petitioner had worked for 240 days in the preceding twelve calendar months prior to his disengagement. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

> **"25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:**
>
> **(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

22. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The notice terminating the services of the petitioner *vide* oral termination dated 18.10.2017 is not in conformity with Section 25-F of the Act. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

23. The petitoiner in his affidavit (PW-1/A) has maintained that the persons junior to him have been retained by the respodnent company in vioaltion of the provisions of section 25-G of the Act but such depositoin on the part of the petitioner would not be sufficient. He has misrebly failed to prove on record by leading documentary evidence that the person junior to him are still working withthe respodnent company. Therefore, in the absence of any evidence on record, it cannot be said that the respondnet has violated the provisoins of section 25-G of the Act.

24. It is, thus, held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F of the Act. The termination of the petitioner is, thus, set aside and quashed. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall be entitled to seniority and continuity in service from the date of his disengagement.

25. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In case titled as **Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, (2009) 1 SCC 20,** the Hon'ble Apex Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Apex Court in case titled as M/s Ritu Marbals Vs. Prabhakant Shukla 2010 (1) SLJ S.C 70,** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

26. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in case titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma, (2005) 2 Supreme Court Cases, 363** that:

> **16. "When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim"**

27. With regard to the merits of the case, there is no denying fact as evident from the testimony of Jai Prakash, Manager HR (RW-1) that the petitioner was offered employment or engagement as an operator *w.e.f.* 1.5.2010 on monthly salary and he had worked as such continuously in such capacity till the time of his termination *i.e* 18.10.2017. The respondent witness also admitted the fact that the petitioner had completed satisfactorily 240 working days in each calendar year. The respondent witness also admitted that neither the petitioner was issued any show cause notice nor subjected to any domestic enquiry. The admissions on the part of the respondent witness are strengthening the case of the petitioner bolstered with double strength as all the averments made thereto in the petition stood duly admitted. The only contention raised from the side of the respondent that the company had suffered losses due to the act and conduct of the petitioner. To substantiate the said plea, the respondent placed reliance of document Mark R-1 *i.e* cancel order due to strike in November, 2017. No witness has been examined to prove the losses. A document which is simply marked and not exhibited on record in accordance with law cannot be looked or peeped into for any purpose. In my humble opinion the respondent company has miserably failed to substantiate their plea. In any case, for the same of convenience, it is admitted that the respondent company had incurred losses, even, though I failed to understand that what prevented the respondent company to comply the mandatory requirement of sections 25-B and 25-F of the Act.

28. For the foregoing reasons, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in the stated legal position mentioned herein *ibid*, I find that the respondent was not at all justified in passing the termination order dated 18.10.2017. In view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is entitled for reinstatement in service with continuity and seniority. However, the petitioner is not entitled to any back-wages. Hence, issue no.1 is decided in favour of the petitioner and against the respondent.

ISSUES NO.2 & 3.

29. Both these issues which are mutually exist and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

30. In order to prove these issues no specific evidence has been led by the respondent which could go to show that as to how the present petition is not maintainable especially when it stand proved on record that the services of the petitioner have been terminated in contravention of the provisions of the Act. Furthermore, the respondent has also failed to prove on record that the petitioner has suppressed material facts from this Court and not come to this Court with clean hands. In the absence of any evidence both these issues are decided in favour of the petitioner and against the respondent.

RELIEF

31. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, the petitioner is ordered to be reengaged in service forthwith subject to seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to record.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number	:	83 of 2018
Instituted on	:	3.7.2018
Decided on	:	11.5.2022

Vinod Kumar c/o Vinod Kumar r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. *...Petitioner.*

VERSUS

The Factory Manager, Ultra Tech. Pharmaceuticals, Village Tipra, P.O Surajpur, Tehsil Baddi, District Solan, H.P. *...Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate

For respondent : Shri R.K. Khidtta, Advocate

AWARD

This is an usual claim petition instituted on behalf of Shri Vinod Kumar (hereinafter to be referred as the petitioner) against the Factory Manager, Ultratech (hereinafter to be referred as the respondent) filed under section 2-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

2. Material facts necessary for the disposal of the present claim petition are thus that the petition was employed as helper by the respondent on monthly salary of Rs. 7500/- *w.e.f.* 1.9.2010. The petitioner has completed 240 days in each calendar year. The petitioner is member of workers union, who has applied for its registration *vide* TRS No. 1511260 before the Registrar of Trade Union H.P., Himrus Building Cart Road Shimla. The worker union had submitted the memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 and thereby raised various lawful demands of the workers. The respondent company did not adhere to the lawful demands of the workers to be fulfilled by 15.10.2017, failing which the workers will be compelled to initiate lawful action/demonstration but the respondent company by getting annoyed, terminated the services of the petitioner *w.e.f.* 18.10.2017. The petitioner also filed the demand notice, the copy of which was sent to Labour Officer, Solan to which the conciliation proceedings are pending. The respondent without issuing any notice terminated the services of the petitioner. No retrenchment compensation was paid to him. The termination of the petitioner is illegal and void and the same is result of without complying with the mandatory provisions of the Act. The petitioner is entitled to all consequential service benefits including seniority, continuity and back-wages.

3. The following prayer clause has been appended in the footnote of the claim petition.

"It is therefore, most respectfully prayed that this Hon'ble Court/Tribunal be pleased to allow the petition of the applicant/petitioner by holding his retrenchment to be wholly improper and unjustified and consequentially holding the workman to be entitled to all service benefits including back-wages, seniority etc."

4. The lis was resisted and contested by the respondents filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come to the Court with clean hands, due to illegal act of the petitioner the respondent company suffered huge losses and no cause of action and gross violation of the provisions of the Act.

5. On merits, it is submitted that the work and conduct of the petitioner during his service period never remained upto the mark as he indulged in illegal activities. The petitioner was a member of Hind Mazdoor Sabha, which is not registered. The demands raised through memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. No demand notice under section 2-K has been received by the appropriate government. The memorandums stood duly replied. The petitioner has filed the claim petition directly and as such the action on the part of the petitioner deserves to be dismissed. There is no violation of any of the provisions of the Act. The respondent has already paid the salary for the month of October, 2017 and other legal dues to the petitioner which has been duly received by him. No conciliation proceedings were held by the Conciliation Officer. The petitioner is not entitled to any service benefits in view of the detailed reply filed hereinabove. It is therefore most respectfully prayed that the claim petition filed by the petitioner/workman against the respondent may kindly be dismissed with heavy cost.

6. No rejoinder has been filed.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 23.4.2019:

1. Whether the termination of the petitioner *w.e.f.* 18.10.2017 is in violation of the provisions of the Industrial Disputes Act as alleged. If so its effect thereto? ...*OPP.*

2. Whether the petition is not maintainable as the petitioner has approached this Court directly, as alleged? If so what effect? ...*OPR.*

3. Whether the petition is not maintainable as the petitioner is alleged to have suppressed material facts from this Court and not come with clean hands, as alleged? If so what effect? ...*OPR.*

4. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Yes
Issue No. 2	:	No
Issue No. 3	:	No
Relief	:	Application is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. Both these issues which are mutually exists and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. In order to substantiate its plea, the petitioner namely Vinod Kumar examined himself as (PW-1) and tendered into evidence his sworn-in affidavit (PW-1/A) wherein he has reiterated almost all the averments, as stated in the claim petition. He also tendered in evidence copy of demand notice Mark P-1, letter dated 24.10.2017 Mark P-2, demand charter Mark P-3, letter dated 10.10.2017 Mark P-4, statement before Conciliation Officer and proceedings dated 5.1.2018 and 15.2.2018 Mark P-5 to Mark P-7.

13. In cross-examination, he admitted that an appointment letter was issued at the time of employment. He denied that the demands raised on 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. He denied that he had not raised any demands before the Conciliation Officer. He denied

that he is gainfully employed. He further denied that they had undertaken a strike in the year 2016 and 2017. He also denied that their work was not satisfactory while they were working in the company. He denied that he had never completed 240 days in any calendar year. He denied that his services were never terminated.

14. In order to rebut, the respondent has examined Shri Jai Parkash Singh, Manager HR as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of cancelled order due to strike Mark R-1 and undertaking given by the employee Mark R-2.

15. In cross-examination, he admitted that the petitioner was engaged by the respondent as helper since 1.9.2010 on monthly salary of Rs. 7500/-. He admitted that the petitioner had completed 240 days in each calendar year. He denied that the wages for the month of October 2017 was given to the petitioner. He denied that neither the petitioner was issued any notice nor conducted any enquiry. He denied that the petitioner was terminated orally on 18.10.2017.

16. At the very out-set, Shri Niranjan Verma, Ld. Counsel for the petitioner contended with all vehemence that termination of the services of the petitioner amounts to retrenchment. Such retrenchment without issuing any notice and conducting any enquiry is in gross violation of the provisions of the Act. The petitioner was not paid his due benefits and the respondent has adopted unfair labour practice. The retrenchment of the services of the petitioner is illegal, void and the same deserves to be quashed and set aside by ordering the reinstatement of the services of the petitioner.

17. *Per contra* Shri R.K Khidtta, Ld. Counsel for the respondent strenuously argued that the petitioner had resorted to unlawful activities such as demonstration/ Dharna under the garb of Hind Mazdoor Sabha Trade Union as a result of which the respondent company suffered huge losses. NO reference has been received from the appropriate government. The petitioner has filed the present petition directly before this Court/Tribunal which is not maintainable. The respondent company has not violated the provisions of the Act.

18. I have given my best anxious considerable thought to the submissions of respective Counsel for the parties and also scrutinized the entire case record with minute care, and caution and circumspection.

19. Thus, from the careful examination of the case record, it is satisfactorily proved that the petitioner was engaged as helper since 1.9.2010. More so, the witness examined by the respondent company (RW-1) has admitted that the services of the petitioner have been engaged on 1.9.2010 as helper. From this admission, it is admittedly proved on record that the petitioner had joined his duties with the respondent company on 1.9.2010 and worked as such till the date of his termination. According to the petitioner, his services were terminated *w.e.f.* 18.10.2017. Admittedly, the petitioner come within the definition of workman which is otherwise not disputes from the side of the respondent. The defence raised from the side of the respondent that the services of the petitioner were disengaged because he had involved in illegal activities due to which the respondent company had suffered losses. Again at the cost of repetition, the respondent company has failed to substantiate by placing on record any such documentary proof which could go to show that the petitioner had involved in illegal activities which caused losses to the company.

20. Now, the question which arises for determination, before this Court as to whether in terminating the services of the petitioner, the respondent has violated the provisions of the Act or not. It is an admitted position on record that the petitioner had worked with the respondent company *w.e.f.* 1.9.2010 till 18.10.2017 and had completed 240 working days in each calendar year.

It is further the admitted position on record that before terminating the services of the petitioner neither any enquiry was conducted nor he was paid retrenchment compensation. Such being the position, it stand proved on record that the workman/petitioner had worked for the required 240 days of working in the period of twelve calendar months preceding the date of termination, he is entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are attracted in this case. It is also admitted that before retrenching the services of the petitioner neither any notice nor compensation has been paid to the petitioner as provided under section 25-F of the Act. Then, it stood clearly established from the admission made by the respondent (RW-1) that the petitioner had worked for 240 days in the preceding twelve calendar months prior to his disengagement. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

> **"25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:**
>
> **(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
>
> **(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."**

21. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

> **"25B. Definition of continuous service. For the purposes of this Chapter,—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;**
>
> **(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-**
>
> **(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-**
>
> **(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and**

(ii) two hundred and forty days, in any other case…."

22. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The notice terminating the services of the petitioner *vide* oral termination dated 18.10.2017 is not in conformity with Section 25-F of the Act. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

23. The petitoiner in his affidavit (PW-1/A) has maintained that the persons junior to him have been retained by the respodnent company in vioaltion of the provisions of section 25-G of the Act but such depositoin on the part of the petitioner would not be sufficient. He has misrebly failed to prove on record by leading documentary evidence that the person junior to him are still working withthe respodnent company. Therefore, in the absence of any evidence on record, it cannot be said that the respondnet has violated the provisoins of section 25-G of the Act.

24. It is, thus, held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F of the Act. The termination of the petitioner is, thus, set aside and quashed. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall be entitled to seniority and continuity in service from the date of his disengagement.

25. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In case titled as **Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, (2009) 1 SCC 20,** the Hon'ble Apex Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Apex Court in case titled as M/s Ritu Marbals Vs. Prabhakant Shukla 2010 (1) SLJ S.C 70,** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

26. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in case titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma, (2005) 2 Supreme Court Cases, 363** that:

> **16. "When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim"**

27. With regard to the merits of the case, there is no denying fact as evident from the testimony of Jai Prakash, Manager HR (RW-1) that the petitioner was offered employment or engagement as an helper *w.e.f.* 1.9.2010 on monthly salary and he had worked as such continuously in such capacity till the time of his termination *i.e* 18.10.2017. The respondent witness also admitted the fact that the petitioner had completed satisfactorily 240 working days in each calendar

year. The respondent witness also admitted that neither the petitioner was issued any show cause notice nor subjected to any domestic enquiry. The admissions on the part of the respondent witness are strengthening the case of the petitioner bolstered with double strength as all the averments made thereto in the petition stood duly admitted. The only contention raised from the side of the respondent that the company had suffered losses due to the act and conduct of the petitioner. To substantiate the said plea, the respondent placed reliance of document Mark R-1 *i.e* cancel order due to strike in November, 2017. No witness has been examined to prove the losses. A document which is simply marked and not exhibited on record in accordance with law cannot be looked or peeped into for any purpose. In my humble opinion the respondent company has miserably failed to substantiate their plea. In any case, for the same of convenience, it is admitted that the respondent company had incurred losses, even, though I failed to understand that what prevented the respondent company to comply the mandatory requirement of sections 25-B and 25-F of the Act.

28. For the foregoing reasons, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in the stated legal position mentioned herein *ibid*, I find that the respondent was not at all justified in passing the termination order dated 18.10.2017. In view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is entitled for reinstatement in service with continuity and seniority. However, the petitioner is not entitled to any back-wages. Hence, issue no.1 is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 & 3.

29. Both these issues which are mutually exist and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

30. In order to prove these issues no specific evidence has been led by the respondent which could go to show that as to how the present petition is not maintainable especially when it stand proved on record that the services of the petitioner have been terminated in contravention of the provisions of the Act. Furthermore, the respondent has also failed to prove on record that the petitioner has suppressed material facts from this Court and not come to this Court with clean hands. In the absence of any evidence both these issues are decided in favour of the petitioner and against the respondent.

RELIEF

31. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, the petitioner is ordered to be reengaged in service forthwith subject to seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to record.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA.**

Application Number	:	84 of 2018
Instituted on	:	30.6.2018
Decided on	:	11.5.2022

Ajay Kumar c/o Vinod Kumar, r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. ...*Petitioner.*

VERSUS

The Factory Manager, Ultra Tech. Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. ...*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate
For respondent : Shri R.K. Khidtta, Advocate

AWARD

This is an usual claim petition instituted on behalf of Shri Ajay Kumar (hereinafter to be referred as the petitioner) against the Factory Manager, Ultratech (hereinafter to be referred as the respondent) filed under section 2-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

2. Material facts necessary for the disposal of the present claim petition are thus that the petition was employed as an Operator by the respondent on monthly salary of Rs. 9900/- *w.e.f.* 1.9.2011. The petitioner has completed 240 days in each calendar year. The petitioner is member of workers union, who has applied for its registration *vide* TRS No. 1511260 before the Registrar of Trade Union H.P., Himrus Building Cart Road Shimla. The worker union had submitted the memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 and thereby raised various lawful demands of the workers. The respondent company did not adhere to the lawful demands of the workers to be fulfilled by 15.10.2017, failing which the workers will be compelled to initiate lawful action/demonstration but the respondent company by getting annoyed, terminated the services of the petitioner *w.e.f.* 18.10.2017. The petitioner also filed the demand notice, the copy of which was sent to Labour Officer, Solan to which the conciliation proceedings are pending. The respondent without issuing any notice terminated the services of the petitioner. No retrenchment compensation was paid to him. The termination of the petitioner is illegal and void and the same is result of without complying with the mandatory provisions of the Act. The petitioner is entitled to all consequential service benefits including seniority, continuity and back-wages.

3. The following prayer clause has been appended in the footnote of the claim petition.

> **"It is therefore, most respectfully prayed that this Hon'ble Court/Tribunal be pleased to allow the petition of the applicant/petitioner by holding his retrenchment to be wholly improper and unjustified and consequentially holding the workman to be entitled to all service benefits including back-wages, seniority etc."**

4. The lis was resisted and contested by the respondents filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come

to the Court with clean hands, due to illegal act of the petitioner the respondent company suffered huge losses and no cause of action and gross violation of the provisions of the Act.

5. On merits, it is submitted that the petitioner was engaged as an Operator *w.e.f* 1.2.2013. The work and conduct of the petitioner during his service period never remained upto the mark as he indulged in illegal activities. The petitioner was a member of Hind Mazdoor Sabha, which is not registered. The demands raised through memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. No demand notice under section 2-K has been received by the appropriate government. The memorandums stood duly replied. The petitioner has filed the claim petition directly and as such the action on the part of the petitioner deserves to be dismissed. There is no violation of any of the provisions of the Act. The respondent has already paid the salary for the month of October, 2017 and other legal dues to the petitioner which has been duly received by him. No conciliation proceedings were held by the Conciliation Officer. The petitioner is not entitled to any service benefits in view of the detailed reply filed hereinabove. It is therefore most respectfully prayed that the claim petition filed by the petitioner/workman against the respondent may kindly be dismissed with heavy cost.

6. No rejoinder has been filed.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 23.4.2019:

1. Whether the termination of the petitioner *w.e.f.* 18.10.2017 is in violation of the provisions of the Industrial Disputes Act as alleged. If so its effect thereto? ...*OPP.*

2. Whether the petition is not maintainable as the petitioner has approached this Court directly, as alleged? If so what effect? ...*OPR.*

3. Whether the petition is not maintainable as the petitioner is alleged to have suppressed material facts from this Court and not come with clean hands, as alleged? If so what effect? ...*OPR.*

4. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1	:	Yes
Issue No. 2	:	No
Issue No. 3	:	No
Relief	:	Application is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. Both these issues which are mutually exists and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. In order to substantiate its plea, the petitioner namely Ajay Kumar examined himself as (PW-1) and tendered into evidence his sworn-in affidavit (PW-1/A) wherein he has reiterated almost all the averments, as stated in the claim petition. He also tendered in evidence termination letter Mark P-1, copy of demand notice Mark P-2, letter dated 24.10.2017 Mark P-3, demand charter Mark P-4, letter dated 10.10.2017 Mark P-5, statement before Conciliation Officer and proceedings dated 5.1.2018 and 15.2.2018 Mark P-6 to Mark P-8.

13. In cross-examination, he admitted that an appointment letter was issued at the time of employment. He denied that he was appointed on 1.2.2013 but volunteered that he was appointed on 1.9.2011. He admitted that bonus was being paid to them by the respondent. He denied that the demands raised on 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. He denied that he had not raised any demands before the Conciliation Officer. He denied that he is gainfully employed. He further denied that they had undertaken a strike in the year 2016 and 2017. He also denied that their work was not satisfactory while they were working in the company. He denied that he had never completed 240 days in any calendar year. He denied that his services were never terminated.

14. In order to rebut, the respondent has examined Shri Jai Parkash Singh, Manager HR as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of cancelled order due to strike Mark R-1 and undertaking given by the employee Mark R-2.

15. In cross-examination, he admitted that the petitioner was engaged by the respondent as operator since 1.9.2011 on monthly salary of Rs. 9900/-. He admitted that the petitioner had completed 240 days in each calendar year. He denied that the wages for the month of October 2017 was given to the petitioner. He denied that neither the petitioner was issued any notice nor conducted any enquiry. He denied that the petitioner was terminated orally on 18.10.2017.

16. At the very out-set, Shri Niranjan Verma, Ld. Counsel for the petitioner contended with all vehemence that termination of the services of the petitioner amounts to retrenchment. Such retrenchment without issuing any notice and conducting any enquiry is in gross violation of the provisions of the Act. The petitioner was not paid his due benefits and the respondent has adopted unfair labour practice. The retrenchment of the services of the petitioner is illegal, void and the same deserves to be quashed and set aside by ordering the reinstatement of the services of the petitioner.

17. *Per contra* Shri R.K Khidtta, Ld. Counsel for the respondent strenuously argued that the petitioner had resorted to unlawful activities such as demonstration/ Dharna under the garb of Hind Mazdoor Sabha Trade Union as a result of which the respondent company suffered huge losses. NO reference has been received from the appropriate government. The petitioner has filed the present petition directly before this Court/Tribunal which is not maintainable. The respondent company has not violated the provisions of the Act.

18. I have given my best anxious considerable thought to the submissions of respective Counsel for the parties and also scrutinized the entire case record with minute care, and caution and circumspection.

19. Thus, from the careful examination of the case record, it is satisfactorily proved that the petitioner was engaged as an operator since 1.9.2011. The respondent company has claimed to be engaged on 1.2.2013, however, no strict proof in this regard was given by the respondent. More so, the witness examined by the respondent company (RW-1) has admitted that the services of the petitioner have been engaged on 1.9.2011. From this admission, it is admittedly proved on record that the petitioner had joined his duties with the respondent company on 1.9.2011 and worked as such till the date of his termination. According to the petitioner, his services were terminated *w.e.f.* 18.10.2017. Admittedly, the petitioner come within the definition of workman which is otherwise not disputes from the side of the respondent. The defence raised from the side of the respondent that the services of the petitioner were disengaged because he had involved in illegal activities due to which the respondent company had suffered losses. Again at the cost of repetition, the respondent company has failed to substantiate by placing on record any such documentary proof which could go to show that the petitioner had involved in illegal activities which caused losses to the company.

20. Now, the question which arises for determination, before this Court as to whether in terminating the services of the petitioner, the respondent has violated the provisions of the Act or not. It is an admitted position on record that the petitioner had worked with the respondent company *w.e.f.* 1.9.2011 till 18.10.2017 and had completed 240 working days in each calendar year. It is further the admitted position on record that before terminating the services of the petitioner neither any enquiry was conducted nor he was paid retrenchment compensation. Such being the position, it stand proved on record that the workman/petitioner had worked for the required 240 days of working in the period of twelve calendar months preceding the date of termination, he is entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are attracted in this case. It is also admitted that before retrenching the services of the petitioner neither any notice nor compensation has been paid to the petitioner as provided under section 25-F of the Act. Then, it stood clearly established from the admission made by the respondent (RW-1) that the petitioner had worked for 240 days in the preceding twelve calendar months prior to his disengagement. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

> **"25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:**
>
> **(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
>
> **(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."**

21. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such

notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

> **"25B. Definition of continuous service. For the purposes of this Chapter,—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;**
>
> **(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-**
>
> **(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-**
>
> **(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and**
>
> **(ii) two hundred and forty days, in any other case…."**

22. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The notice terminating the services of the petitioner vide oral termination dated 18.10.2017 is not in conformity with Section 25-F of the Act. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

23. The petitoiner in his affidavit (PW-1/A) has maintained that the persons junior to him have been retained by the respodnent company in vioaltion of the provisions of section 25-G of the Act but such depositoin on the part of the petitioner would not be sufficient. He has misrebly failed to prove on record by leading documentary evidence that the person junior to him are still working withthe respodnent company. Therefore, in the absence of any evidence on record, it cannot be said that the respondnet has violated the provisoins of section 25-G of the Act.

24. It is, thus, held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F of the Act. The termination of the petitioner is, thus, set aside and quashed. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall be entitled to seniority and continuity in service from the date of his disengagement.

25. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In case titled as **Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, (2009) 1 SCC 20,** the Hon'ble Apex Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Apex Court in case**

titled as M/s Ritu Marbals Vs. Prabhakant Shukla 2010 (1) SLJ S.C 70, that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

26. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in case titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma, (2005) 2 Supreme Court Cases, 363** that:

> **16. "When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim"**

27. With regard to the merits of the case, there is no denying fact as evident from the testimony of Jai Prakash, Manager HR (RW-1) that the petitioner was offered employment or engagement as an operator *w.e.f.* 1.9.2011 on monthly salary and he had worked as such continuously in such capacity till the time of his termination *i.e* 18.10.2017. The respondent witness also admitted the fact that the petitioner had completed satisfactorily 240 working days in each calendar year. The respondent witness also admitted that neither the petitioner was issued any show cause notice nor subjected to any domestic enquiry. The admissions on the part of the respondent witness are strengthening the case of the petitioner bolstered with double strength as all the averments made thereto in the petition stood duly admitted. The only contention raised from the side of the respondent that the company had suffered losses due to the act and conduct of the petitioner. To substantiate the said plea, the respondent placed reliance of document Mark R-1 *i.e* cancel order due to strike in November, 2017. No witness has been examined to prove the losses. A document which is simply marked and not exhibited on record in accordance with law cannot be looked or peeped into for any purpose. In my humble opinion the respondent company has miserably failed to substantiate their plea. In any case, for the same of convenience, it is admitted that the respondent company had incurred losses, even, though I failed to understand that what prevented the respondent company to comply the mandatory requirement of sections 25-B and 25-F of the Act.

28. For the foregoing reasons, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in the stated legal position mentioned herein *ibid*, I find that the respondent was not at all justified in passing the termination order dated 18.10.2017. In view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is entitled for reinstatement in service with continuity and seniority. However, the petitioner is not entitled to any back-wages. Hence, issue no.1 is decided in favour of the petitioner and against the respondent.

ISSUES NO.2 & 3.

29. Both these issues which are mutually exist and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

30. In order to prove these issues no specific evidence has been led by the respondent which could go to show that as to how the present petition is not maintainable especially when it

stand proved on record that the services of the petitioner have been terminated in contravention of the provisions of the Act. Furthermore, the respondent has also failed to prove on record that the petitioner has suppressed material facts from this Court and not come to this Court with clean hands. In the absence of any evidence both these issues are decided in favour of the petitioner and against the respondent.

RELIEF

31. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, the petitioner is ordered to be reengaged in service forthwith subject to seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to record.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number	:	85 of 2018
Instituted on	:	3.7.2018
Decided on	:	11.5.2022

Sunil Dutt c/o Vinod Kumar r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. ...*Petitioner.*

VERSUS

The Factory Manager, Ultra Tech. Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. ...*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjan Verma, Advocate
For respondent : Shri R.K Khidtta, Advocate

AWARD

This is an usual claim petition instituted on behalf of Shri Sunil Dutt (hereinafter to be referred as the petitioner) against the Factory Manager, Ultratech (hereinafter to be referred as the respondent) filed under section 2-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

2. Material facts necessary for the disposal of the present claim petition are thus that the petition was employed as helper by the respondent on monthly salary of Rs. 7050/- *w.e.f.* 1.4.2013. The petitioner has completed 240 days in each calendar year. The petitioner is member of workers union, who has applied for its registration *vide* TRS No. 1511260 before the Registrar of Trade Union H.P., Himrus Building Cart Road Shimla. The worker union had submitted the memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 and thereby raised various lawful demands of the workers. The respondent company did not adhere to the lawful demands of the workers to be fulfilled by 15.10.2017, failing which the workers will be compelled to initiate lawful action/demonstration but the respondent company by getting annoyed, terminated the services of the petitioner *w.e.f.* 18.10.2017. The petitioner also filed the demand notice, the copy of which was sent to Labour Officer, Solan to which the conciliation proceedings are pending. The respondent without issuing any notice terminated the services of the petitioner. No retrenchment compensation was paid to him. The termination of the petitioner is illegal and void and the same is result of without complying with the mandatory provisions of the Act. The petitioner is entitled to all consequential service benefits including seniority, continuity and back-wages.

3. The following prayer clause has been appended in the footnote of the claim petition.

"It is therefore, most respectfully prayed that this Hon'ble Court/Tribunal be pleased to allow the petition of the applicant/petitioner by holding his retrenchment to be wholly improper and unjustified and consequentially holding the workman to be entitled to all service benefits including back-wages, seniority etc."

4. The lis was resisted and contested by the respondents filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come to the Court with clean hands, due to illegal act of the petitioner the respondent company suffered huge losses and no cause of action and gross violation of the provisions of the Act.

5. On merits, it is submitted that the work and conduct of the petitioner during his service period never remained upto the mark as he indulged in illegal activities. The petitioner was a member of Hind Mazdoor Sabha, which is not registered. The demands raised through memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. No demand notice under section 2-K has been received by the appropriate government. The memorandums stood duly replied. The petitioner has filed the claim petition directly and as such the action on the part of the petitioner deserves to be dismissed. There is no violation of any of the provisions of the Act. The respondent has already paid the salary for the month of October, 2017 and other legal dues to the petitioner which has been duly received by him. No conciliation proceedings were held by the Conciliation Officer. The petitioner is not entitled to any service benefits in view of the detailed reply filed hereinabove. It is therefore most respectfully prayed that the claim petition filed by the petitioner/workman against the respondent may kindly be dismissed with heavy cost.

6. No rejoinder has been filed.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 23.4.2019:

1. Whether the termination of the petitioner *w.e.f.* 18.10.2017 is in violation of the provisions of the Industrial Disputes Act as alleged. If so its effect thereto? ...*OPP.*

2. Whether the petition is not maintainable as the petitioner has approached this Court directly, as alleged? If so what effect? ...*OPR.*

3. Whether the petition is not maintainable as the petitioner is alleged to have suppressed material facts from this Court and not come with clean hands, as alleged? If so what effect? ...*OPR.*

4. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Yes
Issue No. 2	:	No
Issue No. 3	:	No
Relief	:	Application is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. Both these issues which are mutually exists and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. In order to substantiate its plea, the petitioner namely Sunil Dutt examined himself as (PW-1) and tendered into evidence his sworn-in affidavit (PW-1/A) wherein he has reiterated almost all the averments, as stated in the claim petition. He also tendered in evidence termination letter Mark P-1, copy of demand notice Mark P-2, letter dated 24.10.2017 Mark P-3, demand charter Mark P-4, letter dated 10.10.2017 Mark P-5, statement before Conciliation Officer and proceedings dated 5.1.2018 and 15.2.2018 Mark P-6 to Mark P-8.

13. In cross-examination, he admitted that an appointment letter was issued at the time of employment. He denied that the demands raised on 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. He denied that he had not raised any demands before the Conciliation Officer. He denied that he is gainfully employed. He further denied that they had undertaken a strike in the year 2016 and 2017. He also denied that their work was not satisfactory while they were working in the company. He denied that he had never completed 240 days in any calendar year. He denied that his services were never terminated.

14. In order to rebut, the respondent has examined Shri Jai Parkash Singh, Manager HR as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of cancelled order due to strike Mark R-1 and undertaking given by the employee Mark R-2.

15. In cross-examination, he admitted that the petitioner was engaged by the respondent as helper since 1.4.2013 on monthly salary of Rs. 7050/-. He admitted that the petitioner had completed 240 days in each calendar year. He denied that the wages for the month of October 2017 was given to the petitioner. He denied that neither the petitioner was issued any notice nor conducted any enquiry. He denied that the petitioner was terminated orally on 18.10.2017.

16. At the very out-set, Shri Niranjan Verma, Ld. Counsel for the petitioner contended with all vehemence that termination of the services of the petitioner amounts to retrenchment. Such retrenchment without issuing any notice and conducting any enquiry is in gross violation of the provisions of the Act. The petitioner was not paid his due benefits and the respondent has adopted unfair labour practice. The retrenchment of the services of the petitioner is illegal, void and the same deserves to be quashed and set aside by ordering the reinstatement of the services of the petitioner.

17. *Per contra* Shri R.K Khidtta, Ld. Counsel for the respondent strenuously argued that the petitioner had resorted to unlawful activities such as demonstration/ Dharna under the garb of Hind Mazdoor Sabha Trade Union as a result of which the respondent company suffered huge losses. No reference has been received from the appropriate government. The petitioner has filed the present petition directly before this Court/Tribunal which is not maintainable. The respondent company has not violated the provisions of the Act.

18. I have given my best anxious considerable thought to the submissions of respective Counsel for the parties and also scrutinized the entire case record with minute care, and caution and circumspection.

19. Thus, from the careful examination of the case record, it is satisfactorily proved that the petitioner was engaged as helper since 1.4.2013. More so, the witness examined by the respondent company (RW-1) has admitted that the services of the petitioner have been engaged on 1.4.2013. From this admission, it is admittedly proved on record that the petitioner had joined his duties with the respondent company on 1.4.2013 and worked as such till the date of his termination. According to the petitioner, his services were terminated *w.e.f.* 18.10.2017. Admittedly, the petitioner come within the definition of workman which is otherwise not disputes from the side of the respondent. The defence raised from the side of the respondent that the services of the petitioner were disengaged because he had involved in illegal activities due to which the respondent company had suffered losses. Again at the cost of repetition, the respondent company has failed to substantiate by placing on record any such documentary proof which could go to show that the petitioner had involved in illegal activities which caused losses to the company.

20. Now, the question which arises for determination, before this Court as to whether in terminating the services of the petitioner, the respondent has violated the provisions of the Act or not. It is an admitted position on record that the petitioner had worked with the respondent company *w.e.f.* 1.4.2013 till 18.10.2017 and had completed 240 working days in each calendar year. It is further the admitted position on record that before terminating the services of the petitioner neither any enquiry was conducted nor he was paid retrenchment compensation. Such being the position, it stand proved on record that the workman/petitioner had worked for the required 240 days of working in the period of twelve calendar months preceding the date of termination, he is entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are attracted in this case. It is also admitted that before retrenching the services of the petitioner neither any notice nor compensation has been paid to the petitioner as provided under section 25-F of the Act. Then, it stood clearly established from the admission made by the respondent (RW-1) that the petitioner had worked for 240 days in the preceding twelve

calendar months prior to his disengagement. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

> **"25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:**
>
> **(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
>
> **(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."**

21. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

> **"25B. Definition of continuous service. For the purposes of this Chapter,—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;**
>
> **(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-**
>
> **(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-**
>
> **(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and**
>
> **(ii) two hundred and forty days, in any other case…."**

22. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the

latter and spirit. The notice terminating the services of the petitioner vide oral termination dated 18.10.2017 is not in conformity with Section 25-F of the Act. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

23. The petitoiner in his affidavit (PW-1/A) has maintained that the persons junior to him have been retained by the respodnent company in vioaltion of the provisions of section 25-G of the Act but such depositoin on the part of the petitioner would not be sufficient. He has misrebly failed to prove on record by leading documentary evidence that the person junior to him are still working withthe respodnent company. Therefore, in the absence of any evidence on record, it cannot be said that the respondnet has violated the provisoins of section 25-G of the Act.

24. It is, thus, held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F of the Act. The termination of the petitioner is, thus, set aside and quashed. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall be entitled to seniority and continuity in service from the date of his disengagement.

25. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In case titled as **Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, (2009) 1 SCC 20,** the Hon'ble Apex Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Apex Court in case titled as M/s Ritu Marbals Vs. Prabhakant Shukla 2010 (1) SLJ S.C 70,** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

26. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in case titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma, (2005) 2 Supreme Court Cases, 36**3 that:

> **16. "When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim"**

27. With regard to the merits of the case, there is no denying fact as evident from the testimony of Jai Prakash, Manager HR (RW-1) that the petitioner was offered employment or engagement as an helper *w.e.f.* 1.4.2013 on monthly salary and he had worked as such continuously in such capacity till the time of his termination *i.e* 18.10.2017. The respondent witness also admitted the fact that the petitioner had completed satisfactorily 240 working days in each calendar year. The respondent witness also admitted that neither the petitioner was issued any show cause notice nor subjected to any domestic enquiry. The admissions on the part of the respondent witness are strengthening the case of the petitioner bolstered with double strength as all the averments made thereto in the petition stood duly admitted. The only contention raised from the side of the respondent that the company had suffered losses due to the act and conduct of the petitioner. To substantiate the said plea, the respondent placed reliance of document Mark R-1 *i.e* cancel order due to strike in November, 2017. No witness has been examined to prove the losses. A document

which is simply marked and not exhibited on record in accordance with law cannot be looked or peeped into for any purpose. In my humble opinion the respondent company has miserably failed to substantiate their plea. In any case, for the same of convenience, it is admitted that the respondent company had incurred losses, even, though I failed to understand that what prevented the respondent company to comply the mandatory requirement of sections 25-B and 25-F of the Act.

28. For the foregoing reasons, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in the stated legal position mentioned herein *ibid*, I find that the respondent was not at all justified in passing the termination order dated 18.10.2017. In view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is entitled for reinstatement in service with continuity and seniority. However, the petitioner is not entitled to any back-wages. Hence, issue no.1 is decided in favour of the petitioner and against the respondent.

ISSUES NO.2 & 3.

29. Both these issues which are mutually exist and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

30. In order to prove these issues no specific evidence has been led by the respondent which could go to show that as to how the present petition is not maintainable especially when it stand proved on record that the services of the petitioner have been terminated in contravention of the provisions of the Act. Furthermore, the respondent has also failed to prove on record that the petitioner has suppressed material facts from this Court and not come to this Court with clean hands. In the absence of any evidence both these issues are decided in favour of the petitioner and against the respondent.

RELIEF

31. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, the petitioner is ordered to be reengaged in service forthwith subject to seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to record.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number : 86 of 2018

Instituted on : 30.6.2018
Decided on : 11.5.2022

Nardev Singh c/o Vinod Kumar, r/o Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. ...*Petitioner*.

VERSUS

The Factory Manager, Ultra Tech. Pharmaceuticals, Village Tipra, P.O. Surajpur, Tehsil Baddi, District Solan, H.P. ...*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947.

For petitioner : Shri Niranjan Verma, Advocate
For respondent : Shri R.K. Khidtta, Advocate

AWARD

This is an usual claim petition instituted on behalf of Shri Nardev Singh (hereinafter to be referred as the petitioner) against the Factory Manager, Ultratech (hereinafter to be referred as the respondent) filed under section 2-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

2. Material facts necessary for the disposal of the present claim petition are thus that the petition was employed as an Operator by the respondent on monthly salary of Rs. 10,700/- *w.e.f.* 1.3.2011. The petitioner has completed 240 days in each calendar year. The petitioner is member of workers union, who has applied for its registration *vide* TRS No. 1511260 before the Registrar of Trade Union H.P., Himrus Building Cart Road Shimla. The worker union had submitted the memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 and thereby raised various lawful demands of the workers. The respondent company did not adhere to the lawful demands of the workers to be fulfilled by 15.10.2017, failing which the workers will be compelled to initiate lawful action/demonstration but the respondent company by getting annoyed, terminated the services of the petitioner *w.e.f.* 18.10.2017. The petitioner also filed the demand notice, the copy of which was sent to Labour Officer, Solan to which the conciliation proceedings are pending. The respondent without issuing any notice terminated the services of the petitioner. No retrenchment compensation was paid to him. The termination of the petitioner is illegal and void and the same is result of without complying with the mandatory provisions of the Act. The petitioner is entitled to all consequential service benefits including seniority, continuity and back-wages.

3. The following prayer clause has been appended in the footnote of the claim petition.

> **"It is therefore, most respectfully prayed that this Hon'ble Court/Tribunal be pleased to allow the petition of the applicant/petitioner by holding his retrenchment to be wholly improper and unjustified and consequentially holding the workman to be entitled to all service benefits including back-wages, seniority etc."**

4. The lis was resisted and contested by the respondents filing written reply to the claim petition filed by the petitioner wherein preliminary objections regarding maintainability, not come to the Court with clean hands, due to illegal act of the petitioner the respondent company suffered huge losses and no cause of action and gross violation of the provisions of the Act.

5. On merits, it is submitted that the petitioner was engaged as an Operator *w.e.f* 1.5.2011. The work and conduct of the petitioner during his service period never remained upto the mark as he indulged in illegal activities. The petitioner was a member of Hind Mazdoor Sabha, which is not registered. The demands raised through memorandums dated 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. No demand notice under section 2-K has been received by the appropriate government. The memorandums stood duly replied. The petitioner has filed the claim petition directly and as such the action on the part of the petitioner deserves to be dismissed. There is no violation of any of the provisions of the Act. The respondent has already paid the salary for the month of October, 2017 and other legal dues to the petitioner which has been duly received by him. No conciliation proceedings were held by the Conciliation Officer. The petitioner is not entitled to any service benefits in view of the detailed reply filed hereinabove. It is therefore most respectfully prayed that the claim petition filed by the petitioner/workman against the respondent may kindly be dismissed with heavy cost.

6. No rejoinder has been filed.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 23.4.2019:

1. Whether the termination of the petitioner *w.e.f.* 18.10.2017 is in violation of the provisions of the Industrial Disputes Act as alleged. If so its effect thereto? ...*OPP.*

2. Whether the petition is not maintainable as the petitioner has approached this Court directly, as alleged? If so what effect? ...*OPR.*

3. Whether the petition is not maintainable as the petitioner is alleged to have suppressed material facts from this Court and not come with clean hands, as alleged? If so what effect? ...*OPR.*

4. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Yes
Issue No. 2	:	No
Issue No. 3	:	No
Relief	:	Application is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO.1.

11. Both these issues which are mutually exists and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

12. In order to substantiate its plea, the petitioner namely Nardev Singh examined himself as (PW-1) and tendered into evidence his sworn-in affidavit (PW-1/A) wherein he has reiterated almost all the averments, as stated in the claim petition. He also tendered in evidence termination letter Mark P-1, copy of demand notice Mark P-2, letter dated 24.10.2017 Mark P-3, demand charter Mark P-4, letter dated 10.10.2017 Mark P-5, statement before Conciliation Officer and proceedings dated 5.1.2018 and 15.2.2018 Mark P6 to Mark P-8.

13. In cross-examination, he admitted that an appointment letter was issued at the time of employment. He denied that he was appointed on 1.5.2011 but volunteered that he was appointed on 1.3.2011. He admitted that bonus was being paid to them by the respondent. He denied that the demands raised on 23.7.2017, 31.8.2017 and 28.9.2017 were not genuine. He denied that he had not raised any demands before the Conciliation Officer. He denied that he is gainfully employed. He further denied that they had undertaken a strike in the year 2016 and 2017. He also denied that their work was not satisfactory while they were working in the company. He denied that he had never completed 240 days in any calendar year. He denied that his services were never terminated.

14. In order to rebut, the respondent has examined Shri Jai Parkash Singh, Manager HR as (RW-1), who tendered in evidence his affidavit (RW-1/A) wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of cancelled order due to strike Mark R-1 and undertaking given by the employee Mark R-2.

15. In cross-examination, he admitted that the petitioner was engaged by the respondent as operator since 1.3.2011 on monthly salary of Rs. 10,700/-. He admitted that the petitioner had completed 240 days in each calendar year. He denied that the wages for the month of October 2017 was given to the petitioner. He denied that neither the petitioner was issued any notice nor conducted any enquiry. He denied that the petitioner was terminated orally on 18.10.2017.

16. At the very out-set, Shri Niranjan Verma, Ld. Counsel for the petitioner contended with all vehemence that termination of the services of the petitioner amounts to retrenchment. Such retrenchment without issuing any notice and conducting any enquiry is in gross violation of the provisions of the Act. The petitioner was not paid his due benefits and the respondent has adopted unfair labour practice. The retrenchment of the services of the petitioner is illegal, void and the same deserves to be quashed and set aside by ordering the reinstatement of the services of the petitioner.

17. *Per contra* Shri R.K. Khidtta, Ld. Counsel for the respondent strenuously argued that the petitioner had resorted to unlawful activities such as demonstration/ Dharna under the garb of Hind Mazdoor Sabha Trade Union as a result of which the respondent company suffered huge losses. No reference has been received from the appropriate government. The petitioner has filed the present petition directly before this Court/Tribunal which is not maintainable. The respondent company has not violated the provisions of the Act.

18. I have given my best anxious considerable thought to the submissions of respective Counsel for the parties and also scrutinized the entire case record with minute care, and caution and circumspection.

19. Thus, from the careful examination of the case record, it is satisfactorily proved that the petitioner was engaged as an operator since 1.3.2011. The respondent company has claimed to

be engaged on 1.2.2013, however, no strict proof in this regard was given by the respondent. More so, the witness examined by the respondent company (RW-1) has admitted that the services of the petitioner have been engaged on 1.3.2011. From this admission, it is admittedly proved on record that the petitioner had joined his duties with the respondent company on 1.3.2011 and worked as such till the date of his termination. According to the petitioner, his services were terminated *w.e.f.* 18.10.2017. Admittedly, the petitioner come within the definition of workman which is otherwise not disputes from the side of the respondent. The defence raised from the side of the respondent that the services of the petitioner were disengaged because he had involved in illegal activities due to which the respondent company had suffered losses. Again at the cost of repetition, the respondent company has failed to substantiate by placing on record any such documentary proof which could go to show that the petitioner had involved in illegal activities which caused losses to the company.

20. Now, the question which arises for determination, before this Court as to whether in terminating the services of the petitioner, the respondent has violated the provisions of the Act or not. It is an admitted position on record that the petitioner had worked with the respondent company *w.e.f.* 1.3.2011 till 18.10.2017 and had completed 240 working days in each calendar year. It is further the admitted position on record that before terminating the services of the petitioner neither any enquiry was conducted nor he was paid retrenchment compensation. Such being the position, it stand proved on record that the workman/petitioner had worked for the required 240 days of working in the period of twelve calendar months preceding the date of termination, he is entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are attracted in this case. It is also admitted that before retrenching the services of the petitioner neither any notice nor compensation has been paid to the petitioner as provided under section 25-F of the Act. Then, it stood clearly established from the admission made by the respondent (RW-1) that the petitioner had worked for 240 days in the preceding twelve calendar months prior to his disengagement. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

> **"25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:**
>
> **(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
>
> **(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."**

21. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service. For the purposes of this Chapter,—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

22. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The notice terminating the services of the petitioner vide oral termination dated 18.10.2017 is not in conformity with Section 25-F of the Act. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

23. The petitoiner in his affidavit (PW-1/A) has maintained that the persons junior to him have been retained by the respodnent company in vioaltion of the provisions of section 25-G of the Act but such depositoin on the part of the petitioner would not be sufficient. He has misrebly failed to prove on record by leading documentary evidence that the person junior to him are still working withthe respodnent company. Therefore, in the absence of any evidence on record, it cannot be said that the respondnet has violated the provisoins of section 25-G of the Act.

24. It is, thus, held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F of the Act. The termination of the petitioner is, thus, set aside and quashed. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall be entitled to seniority and continuity in service from the date of his disengagement.

25. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In case titled as **Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, (2009) 1 SCC 20,** the Hon'ble Apex Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Apex Court in case titled as M/s Ritu Marbals Vs. Prabhakant Shukla 2010 (1) SLJ S.C 70,** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held

that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

26. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in case titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma, (2005) 2 Supreme Court Cases, 363** that:

> **16. "When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim"**

27. With regard to the merits of the case, there is no denying fact as evident from the testimony of Jai Prakash, Manager HR (RW-1) that the petitioner was offered employment or engagement as an operator since March, 2011 on monthly salary and he had worked as such continuously in such capacity till the time of his termination *i.e* 18.10.2017. The respondent witness also admitted the fact that the petitioner had completed satisfactorily 240 working days in each calendar year. The respondent witness also admitted that neither the petitioner was issued any show cause notice nor subjected to any domestic enquiry. The admissions on the part of the respondent witness are strengthening the case of the petitioner bolstered with double strength as all the averments made thereto in the petition stood duly admitted. The only contention raised from the side of the respondent that the company had suffered losses due to the act and conduct of the petitioner. To substantiate the said plea, the respondent placed reliance of document Mark R-1 *i.e* cancel order due to strike in November, 2017. No witness has been examined to prove the losses. A document which is simply marked and not exhibited on record in accordance with law cannot be looked or peeped into for any purpose. In my humble opinion the respondent company has miserably failed to substantiate their plea. In any case, for the same of convenience, it is admitted that the respondent company had incurred losses, even, though I failed to understand that what prevented the respondent company to comply the mandatory requirement of sections 25-B and 25-F of the Act.

28. For the foregoing reasons, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in the stated legal position mentioned herein *ibid*, I find that the respondent was not at all justified in passing the termination order dated 18.10.2017. In view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is entitled for reinstatement in service with continuity and seniority. However, the petitioner is not entitled to any back-wages. Hence, issue no.1 is decided in favour of the petitioner and against the respondent.

ISSUES NO.2 & 3.

29. Both these issues which are mutually exist and interzingly connected with each other and required common appreciation of evidence taken up together for the purpose of determination and adjudication.

30. In order to prove these issues no specific evidence has been led by the respondent which could go to show that as to how the present petition is not maintainable especially when it stand proved on record that the services of the petitioner have been terminated in contravention of the provisions of the Act. Furthermore, the respondent has also failed to prove on record that the

petitioner has suppressed material facts from this Court and not come to this Court with clean hands. In the absence of any evidence both these issues are decided in favour of the petitioner and against the respondent.

RELIEF

31. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, the petitioner is ordered to be reengaged in service forthwith subject to seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to record.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF Sh. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number	:	152 of 2019
Instituted on	:	5.11.2019
Decided on	:	11.5.2022

Sujata Rani w/o Shri Partap Singh c/o Birbal Kumar, r/o VPO Taksal, Tehsil Kasauli, District Solan, H.P. ..*Petitioner* .

Versus

M/s Ind-Swift Ltd. Plot No. 23 and 17-B, Sector-2, Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager. ...*Respondent.*

Petition/Application under section 33-A of the Industrial Disputes Act

For the Applicant	:	Shri R.K Khidtta, Ld. Advocate
For the Respondent	:	Shri Upender Sharma, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) filed by Sujata Rani (hereinafter to be referred as petitioner) against M/s Ind-Swift Ltd. (hereinafter to be referred as the respondent).

2. Material facts necessary for the disposal of the present petition are thus that the workers of the respondent company were not getting the service benefits and due to adamant

attitude of the respondent company no settlement was arrived at between the parties. The petitioner raised demand *vide* demand notice dated 11.7.2013 to which the conciliation proceedings were initiated but failed and as such the appropriate government sent the reference to this Court *vide* reference no. 84 of 2014, which was partly allowed by this Court *vide* award dated 30.7.2019. During the pendency of the proceedings, the respondent company terminated the services of the petitioner *w.e.f.* 2.4.2014 in violation of section 33 of the Act. The termination/dismissal of the services of the petitioner by the respondent without any prior permission/approval during the pendency of the reference is totally wrong and arbitrary.

3. The following prayer clause has been appended in the footnote of the petition, which reads as under:

> "In view of the submissions made hereinabove, it is therefore most humbly prayed that the application filed by the applicant may kindly be allowed and the dismissal of the services of the applicant *w.e.f.* 2.4.2014 during the pendency of the reference petition may kindly be held illegal and the respondent company may kindly be directed to allow the applicant to work on the same post with all service benefits including full back-wages and respondent company may kindly be punished for the violation of the mandatory provisions of Industrial Disputes Act, 1947 and may also be burdened with heavy cost of his application amounting to ₹ 50000/- and may kindly be further directed to pay the damages to may not adhere to violate the mandatory provisions of the Industrial Disputes Act."

4. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections of maintainability, not approached the Court with clean hands, suppression of material facts and estoppel have been raised.

5. On merits, it is denied that the workers working with the respondent company were not getting the service benefits. Reply to demand notice dated 4.9.2013 was filed. It is denied that the respondent company during the pendency of the proceedings terminated the services of the petitioner *w.e.f.* 2.4.2014. It is submitted that the due to continuous losses in Parwanoo Unit, it was mutually agreed and decided by the management and workers to transfer the workers to other locations/units to save their livelihood *i.e* Baddi. The petitioner herself voluntarily abandoned the job by not joining her duties at the transferred place. Rest of the contests have been denied. It is therefore prayed that in view of the submission made hereinabove it is most respectfully prayed that the application of the petitioner may kindly be dismissed with cost in the interest of justice .

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the petition.

7. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 20.11.2021.

1. Whether the termination of the services of the petitioner during the pendency of the reference petition to be held illegal and unjustified? ...*OPA.*

2. If issue no.1 is proved in affirmative, then what sort of relief the petitioner is entitled to? ...*OPA.*

3. Whether the petition is not maintainable in the present form? ...*OPR.*

4. Whether the petitioner is estopped to file and maintain the present application due to her own act, deed, conduct and acquiescence? ...*OPR.*

5. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue no. 2	Entitled to reinstatement with seniority and continuity but without back-wages.
Issue No.3	No
Issue no.4	No
Relief.	Application allowed, as per operative part of order

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate her case, the petitioner namely Smt. Sujata Rani appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A). She also tendered in evidence demand notice (PW-1/B) and copy of judgment (PW-1/C).

13. In cross-examination, she denied that they led strike in the respondent company on 5.4.2013. She further denied that on 15.5.2013, settlement was arrived in between the management and the workers. She admitted that there is no reference in the demand notice regarding settlement. She denied that on 5.6.2014 the management had informed her that the company is not in position to run its Parwanoo unit. She further denied that after the Parwanoo unit became sick the workmen were given the option to name their choice places to be posted. She admitted that transfer orders were issued. She denied that they have refused to receive transfer orders and she did not join at Baddi unit. She further denied that 150 workers had joined at Baddi Unit. She denied that she was not terminated by the company.

14. In order to rebut, the respondent examined one Shri Shankar Sharma as (RW-1), who tendered in evidence his affidavit (RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in to evidence reply to the demand notice Mark RA, transfer order dated 8.4.2014 (RW-1/B), absent letter (RW-1/C) and copy of standing orders (RW-1/D).

15. In cross-examination, he admitted that the petitioner alongwith 102 workers issued the demand notice (PW-1/B) to the respondent. He further admitted that the demand notice was

referred to this Court *vide* notification sent by the Labour Commissioner, registered as Reference no. 84 of 2014 with this Court which was answered in favour of the petitioner. He denied that the petition was terminated from service from 21.5.2014. He volunteered that the petitioner has abandoned the job in the event of transfer. He admitted that the services of the petitioner have been terminated vide letter dated 21.5.2014. He further admitted that the respondent is ready to take back the petitioner. He admitted that no show cause notice or chargesheet was issued to the petitioner. He further admitted that no enquiry was conducted. He also admitted that no application for approval for termination was filed in this Court. He admitted that demand notice dated 11.7.2013 was pending.

16. This is the entire oral as well as documentary evidence led from the side of the parties.

17. Shri R.K Khidtta, Learned counsel for the applicant has contended with all vehemence that the applicant along-with other workers had approached this Court for the redressal of their grievances by filing the present application under section 33-A of the Act as the reference which has been sent by the appropriate government to this Court for legal adjudication stands partly answered in favour of the petitioner *vide* award dated 30.7.2019. This Court *vide* award dated 30.7.2019, directed the respondent to pay the arrears of enhanced wages to the petitioners payable from Jan., 2013 till April, 2013 as was being paid *w.e.f.* May 2013, within a period of three months. During the pendency of the reference petition, the respondent company had terminated the services of the petitioner which is totally illegal and unjust being in violation of the provisions of section 33 of the Act. The termination of the services of the petitioner during the pendency of the proceedings has been issued without following any procedure as envisaged under law. Neither any show cause notice has been issued nor paid any compensation before terminating the services of the petitioner. He prayed that the illegal termination order may kindly be set aside and the petitioner may kindly be ordered to be reinstated in service with all consequential service benefits.

18. Per contra, Shri Upender Sharma, Ld. Counsel for the respondent argued that the services of the petitioner have been transferred from its Parwanoo Unit to Baddi Unit and most of the workers have joined their duties at transferred place but the petitioner miserably failed to resume her duties at transferred place which clearly show that the petitioner is not interested to join her duties at transferred place and abandoned the job on her own will on account of continuous absenteeism on her part. It is therefore prayed that the application filed by the petitioner may kindly be dismissed.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the applicant, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Before, proceeding further, it is important to reproduce sections 33-A and 9-A of the Act, which reads as under:

> **"33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.—**Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention may, make a complaint in writing in the prescribed manner—
>
> (a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."

21. Section 9-A of the Act is reproduced as under:

"9A. Notice of change.—No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice: Provided that no notice shall be required for effecting any such change—

(a) where the change is effected in pursuance of any settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

22. Therefore, now, it has to be seen as to whether the respondent company has contravened the provisions of section 33- A of the Act or not and further as to whether there is any change in the service condition of the petitioner or not?

23. Thus, from the careful examination of the entire case record, it is manifestly clear on record that the services of the applicant were engaged by the respondent company at its Parwanoo unit and the workers of respondent company raised demand notice, which was finally sent to this Court as reference by the appropriate government for adjudication. The said reference was registered as Reference no. 84 of 2014 and was decided by my Ld. Predecessor *vide* award dated 30.7.2019. It is also clear from the record that during the pendency of reference petition, the respondent company *vide* order dated 21.4.2014 terminated the services of the applicant. From the side of the respondent company it is pleaded that the services of the petitioner have been transferred from its Parwanoo Unit to Baddi unit due to heavy losses and the petitioner had failed to join her duties at transferred place despite issuances of notices dated 8.4.2014 and 21.5.2014, hence, it is assumed that she had abandoned her job. The termination of the services of the petitioner during the pendency of the proceedings were emphatically denied.

24. In the instant case, there is absolutely no denial about the factum of the relationship of employer and employee between the parties. Admittedly, the petitioner and 101 workers working with the respondent company raised their demand notice *vide* demand notice dated 11.7.2013 before the respondent company to be fulfilled by the respondent management. The demand notice was referred to this Court by the appropriate government which was registered as Reference no. 84 of 2014 and was decided on 30.7.2019. The relief part of the award reads as under:

"For the foregoing reasons discussed hereinabove supra, the reference is partly allowed. The respondent is directed to pay the arrears of enhanced wages to the petitioner's payable from Jan., 2013 till April, 2013 as was being paid *w.e.f.* May 2013, within a period of three months from today failing which the same shall carry interest @ 9% per annum."

25. Therefore, it is clearly established on record that there was a pendency of dispute between the parties *w.e.f.* 27.9.2013 to 31.7.2019. It is alleged from the side of the petitioner that the services of the petitioner have been terminated *vide* order dated 2.4.2014. The respondent company *vide* transfer order dated 8.4.2014 transferred the workers from Parwanoo unit to Baddi unit, therefore, it could easily be assumed that there was change in the condition of service either by way of termination order dated 2.4.2014 or by way of transfer order dated 8.4.2014. It is clear that the same has been ordered by the respondent company during the pendency of reference petition no. 84 of 2014 before this Court. Admittedly, the change in service condition etc. remained unchanged under certain circumstances during the pendency of proceedings, however, such change in the condition of service can be ordered with the express permission in writing of the authority concerned before which the proceedings are pending. It is also an admitted position on record before transferring the petitioner, the respondent company has failed to follow the mandatory provisions of sections 33 and 9-A of the Act.

26. Verily, it is satisfactorily proved on record that from the attendant facts and circumstances of the case that neither there is any retrenchment compensation nor any retrenchment notice has been paid/issued to the petitioner. Even, neither any show cause notice nor any chargesheet was served upon the petitioner before terminating her services. Further, neither there is any express permission in writing nor approval has been obtained from the competent authority *i.e* before whom the proceedings were pending on account of raising the demand notice dated 27.9.2013 till the reference decided by this Court *vide* award dated 30.7.2019.

27. Undoubtedly, the respondent has tried to establish on record that the petitioner herself has abandoned the job as she failed to resume her duties at the transferred place.

28. Moreover, it is a matter of common parlance that the abandonment has to be proved by the employer like any other misconduct. Merely on the pretext that the workman has failed to report for discharging his duties, it cannot be presumed that the petitioner either left the job or abandoned the same. Simply because a workman fails to report for duty, it cannot be presumed that she has left/abandoned the job. There is neither any oral or documentary evidence on record on the part of the respondent to show that any show cause notice was served upon the petitioner calling upon him to join his duties. Absence from duty is a serious misconduct. As such the plea of abandonment put forth by the respondent/employer is not established.

29. Consequently, the defence of the respondent is also to the effect that the services of the petitioner were never been terminated rather she herself has abandoned his job by not resuming her duties at transferred place. It is also borne out form the record that no disciplinary action was initiated against the petitioner by the respondent because of the alleged absence from duty. At the cost of repetition, the respondent has miserably failed to prove abandonment on record as no warning letter or chargesheet was issued to her.

30. In my humble opinion, an outright support has been drawn from the judgment rendered by the Hon'ble Apex Court in case titled as **G. T. Lad vs. Chemicals and Fibres of India 1979 (1) SCC 590** that to constitute abandonment there must be total or complete giving up of duties so as to indicate an intention not to resume the same. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case. It must be total and under such circumstances

as clearly to indicate an absolute relinquishment. The intention may be inferred from the acts and conduct of the party.

31. Further, it has further been held by the **Hon'ble Apex Court in M/s Scooters India Ltd., Vs. M. Mohammad Yaqub 2011 (1) SCC 61** that: "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls." It was further held that: "The principles of natural justice were required to be followed by giving opportunity to the workman. Para 12 is relevant and is reproduced as under:

> "The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been complied with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without flowing the provisions of law. As the workman was not allowed to join duty, Standing Orders 9-3-12 could not have been used for terminating his services."

32. Therefore, keeping in view the law laid down by the Hon'ble Apex Court (Supra) and keeping in view the attendant facts and circumstances of the present case, I have no hesitation in coming to the conclusion that the respondent has failed to prove on record that the petitioner had herself abandoned the job and she was afforded reasonable opportunities of being heard rather her services were terminated by the respondent on the ground of alleged abandonment.

33. Henceforth, keeping in view of my aforesaid discussion, it is proved on record that the termination of the services of the petitioner from service is clear cut violation of the provisions of section 33 of the Act. The termination of the petitioner is, thus, set aside and quashed. The petitioner is held entitled for re-instatement forthwith on the same post with seniority and continuity in service from the date of her disengagement. The petitioner is claiming all consequential benefits *i.e* back-wages etc. The petitioner is aged 45 years. There is no averment either in the claim petition or by way of tendering affidavit that the petitioner was not gainfully employed during the period of termination. Though, she submitted that she was at the verge of starvation having no source of income available with her. In my humble opinion a person aged 45 years would not remain without work and earn her livelihood for pretty long period of seven years with effect from 2.4.2014, the date of termination. Accordingly both these issues are decided in favour of the petitioner and against the respondent.

ISSUES NO. 3 & 4:

34. In order to prove this issue no specific evdeince has been led by the respdonent which could go to show as to show the present claim petition is not maintainable and how the petitioner is estopped from filing of present applciation. Moreover, in view of my findings on issues no. 1 and 2, above, I find nothing wrong with this petition which is perfectably maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respodnent.

RELIEF

35. As a sequel to my above discussion and findings on issues no.1 to 4, the application filed by the petitioner succeeds and is hereby allowed. Resultantly, the respondent company is directed to re-instate the petitioner with seniority and continuity. However, the petitioner is not entitled to any back-wages. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 11th day of May, 2022.

RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF Sh. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number	:	153 of 2019
Instituted on	:	5.11.2019
Decided on	:	11.5.2022

Meera Devi w/o Shri Birbal Kumar, r/o VPO Taksal, Tehsil Kasauli, District Solan, H.P.
...Petitioner .

Versus

M/s Ind-Swift Ltd. Plot No. 23 and 17-B, Sector-2, Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager. *...Respondent.*

Petition/Application under section 33-A of the Industrial Disputes Act.

For the Applicant	:	Shri R.K Khidtta, Ld. Advocate.
For the Respondent	:	Shri Upender Sharma, Advocate.

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) filed by Meera Devi (hereinafter to be referred as petitioner) against M/s Ind-Swift Ltd. (hereinafter to be referred as the respondent).

2. Material facts necessary for the disposal of the present petition are thus that the workers of the respondent company were not getting the service benefits and due to adamant attitude of the respondent company no settlement was arrived at between the parties. The petitioner raised demand *vide* demand notice dated 11.7.2013 to which the conciliation proceedings were initiated but failed and as such the appropriate government sent the reference to this Court vide reference no. 84 of 2014, which was partly allowed by this Court *vide* award dated 30.7.2019. During the pendency of the proceedings, the respondent company terminated the services of the petitioner *w.e.f.* 2.4.2014 in violation of section 33 of the Act. The termination/dismissal of the services of the petitioner by the respondent without any prior permission/approval during the pendency of the reference is totally wrong and arbitrary.

4. The following prayer clause has been appended in the footnote of the petition, which reads as under:

> "In view of the submissions made hereinabove, it is therefore most humbly prayed that the application filed by the applicant may kindly be allowed and the dismissal of the services of the applicant *w.e.f.* 2.4.2014 during the pendency of the reference petition may kindly be held illegal and the respondent company may kindly be directed to allow the applicant to work on the same post with all service benefits including full back-wages and respondent company may kindly be punished for the violation of the mandatory provisions of Industrial Disputes Act, 1947 and may also be burdened with heavy cost of his application amounting to ₹ 50000/- and may kindly be further directed to pay the damages to the tune of ₹ 200000/- so that the respondent may not adhere to violate the mandatory provisions of the Industrial Disputes Act."

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections of maintainability, not approached the Court with clean hands, suppression of material facts and estoppel have been raised.

6. On merits, it is denied that the workers working with the respondent company were not getting the service benefits. Reply to demand notice dated 4.9.2013 was filed. It is denied that the respondent company during the pendency of the proceedings terminated the services of the petitioner *w.e.f.* 2.4.2014. It is submitted that the due to continuous losses in Parwanoo Unit, it was mutually agreed and decided by the management and workers to transfer the workers to other locations/units to save their livelihood i.e Baddi. The petitioner herself voluntarily abandoned the job by not joining her duties at the transferred place. Rest of the contests have been denied. It is therefore prayed that in view of the submission made hereinabove it is most respectfully prayed that the application of the petitioner may kindly be dismissed with cost in the interest of justice.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the petition.

8. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 20.11.2021.

1. Whether the termination of the services of the petitioner during the pendency of the reference petition to be held illegal and unjustified? ...*OPA.*

2. If issue no.1 is proved in affirmative, then what sort of relief the petitioner is entitled to? ...*OPA.*

3. Whether the petition is not maintainable in the present form? ...*OPR.*

4. Whether the petitioner is estopped to file and maintain the present application due to her own act, deed, conduct and acquiescence? ...*OPR.*

5. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes
Issue No. 2	Entitled to reinstatement with seniority and continuity but without back-wages.
Issue No. 3	No
Issue No. 4	No
Relief.	Application allowed, as per operative part of order

REASONS FOR FINDINGS

ISSUES NO.1 & 2:

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. To substantiate her case, the petitioner namely Smt. Meera Devi appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A). She also tendered in evidence demand notice (PW-1/B) and copy of judgment (PW-1/C).

14. In cross-examination, she denied that they led strike in the respondent company on 5.4.2013. She further denied that on 15.5.2013, settlement was arrived in between the management and the workers. She admitted that there is no reference in the demand notice regarding settlement. She denied that on 5.6.2014 the management had informed her that the company is not in position to run its Parwanoo unit. She further denied that after the Parwanoo unit became sick the workmen were given the option to name their choice places to be posted. She admitted that transfer orders were issued. She denied that they have refused to receive transfer orders and she did not join at Baddi unit. She further denied that 150 workers had joined at Baddi Unit. She denied that she was not terminated by the company.

15. In order to rebut, the respondent examined one Shri Shankar Sharma as (RW-1), who tendered in evidence his affidavit (RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in to evidence reply to the demand notice Mark RA, transfer order dated 8.4.2014 (RW-1/B), absent letter (RW-1/C) and copy of standing orders (RW-1/D).

16. In cross-examination, he admitted that the petitioner along-with 102 workers issued the demand notice (PW-1/B) to the respondent. He further admitted that the demand notice was referred to this Court *vide* notification sent by the Labour Commissioner, registered as Reference no. 84 of 2014 with this Court which was answered in favour of the petitioner. He denied that the petition was terminated from service from 21.5.2014. He volunteered that the petitioner has abandoned the job in the event of transfer. He admitted that the services of the petitioner have been terminated vide letter dated 21.5.2014. He further admitted that the respondent is ready to take back the petitioner. He admitted that no show cause notice or chargesheet was issued to the petitioner. He further admitted that no enquiry was conducted. He also admitted that no application for approval for termination was filed in this Court. He admitted that demand notice dated 11.7.2013 was pending.

17. This is the entire oral as well as documentary evidence led from the side of the parties.

18. Shri R.K Khidtta, Learned counsel for the applicant has contended with all vehemence that the applicant alongwith other workers had approached this Court for the redressal of their grievances by filing the present application under section 33-A of the Act as the reference which has been sent by the appropriate government to this Court for legal adjudication stands partly answered in favour of the petitioner *vide* award dated 30.7.2019. This Court *vide* award dated 30.7.2019, directed the respondent to pay the arrears of enhanced wages to the petitioners payable from Jan., 2013 till April, 2013 as was being paid *w.e.f.* May 2013, within a period of three months. During the pendency of the reference petition, the respondent company had terminated the services of the petitioner which is totally illegal and unjust being in violation of the provisions of section 33 of the Act. The termination of the services of the petitioner during the pendency of the proceedings has been issued without following any procedure as envisaged under law. Neither any show cause notice has been issued nor paid any compensation before terminating the services of the petitioner. He prayed that the illegal termination order may kindly be set aside and the petitioner may kindly be ordered to be reinstated in service with all consequential service benefits.

19. Per contra, Shri Upender Sharma, Ld. Counsel for the respondent argued that the services of the petitioner have been transferred from its Parwanoo Unit to Baddi Unit and most of the workers have joined their duties at transferred place but the petitioner miserably failed to resume her duties at transferred place which clearly show that the petitioner is not interested to join her duties at transferred place and abandoned the job on her own will on account of continuous absenteeism on her part. It is therefore prayed that the application filed by the petitioner may kindly be dismissed.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the applicant, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Before, proceeding further, it is important to reproduce sections 33-A and 9-A of the Act, which reads as under:

> **"33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.—**Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention may, make a complaint in writing in the prescribed manner—
>
> (a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."

22. Section 9-A of the Act is reproduced as under:

"9A. Notice of change.—No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,--

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty- one days of giving such notice: Provided that no notice shall be required for effecting any such change—

(a) where the change is effected in pursuance of any settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

23. Therefore, now, it has to be seen as to whether the respondent company has contravened the provisions of section 33- A of the Act or not and further as to whether there is any change in the service condition of the petitioner or not?

24. Thus, from the careful examination of the entire case record, it is manifestly clear on record that the services of the applicant were engaged by the respondent company at its Parwanoo unit and the workers of respondent company raised demand notice, which was finally sent to this Court as reference by the appropriate government for adjudication. The said reference was registered as Reference no. 84 of 2014 and was decided by my Ld. Predecessor vide award dated 30.7.2019. It is also clear from the record that during the pendency of reference petition, the respondent company *vide* order dated 21.4.2014 terminated the services of the applicant. From the side of the respondent company it is pleaded that the services of the petitioner have been transferred from its Parwanoo Unit to Baddi unit due to heavy losses and the petitioner had failed to join her duties at transferred place despite issuances of notices dated 8.4.2014 and 21.5.2014, hence, it is assumed that she had abandoned her job. The termination of the services of the petitioner during the pendency of the proceedings were emphatically denied.

25. In the instant case, there is absolutely no denial about the factum of the relationship of employer and employee between the parties. Admittedly, the petitioner and 101 workers working with the respondent company raised their demand notice *vide* demand notice dated 11.7.2013 before the respondent company to be fulfilled by the respondent management. The demand notice was referred to this Court by the appropriate government which was registered as Reference no. 84 of 2014 and was decided on 30.7.2019. The relief part of the award reads as under:

"For the foregoing reasons discussed hereinabove *supra*, the reference is partly allowed. The respondent is directed to pay the arrears of enhanced wages to the petitioner's payable from Jan., 2013 till April, 2013 as was being paid *w.e.f.* May 2013, within a period of three months from today failing which the same shall carry interest @ 9% per annum."

26. Therefore, it is clearly established on record that there was a pendency of dispute between the parties w.e.f. 27.9.2013 to 31.7.2019. It is alleged from the side of the petitioner that the services of the petitioner have been terminated *vide* order dated 2.4.2014. The respondent company *vide* transfer order dated 8.4.2014 transferred the workers from Parwanoo unit to Baddi unit, therefore, it could easily be assumed that there was change in the condition of service either by way of termination order dated 2.4.2014 or by way of transfer order dated 8.4.2014. It is clear that the same has been ordered by the respondent company during the pendency of reference petition no. 84 of 2014 before this Court. Admittedly, the change in service condition etc. remained unchanged under certain circumstances during the pendency of proceedings, however, such change in the condition of service can be ordered with the express permission in writing of the authority concerned before which the proceedings are pending. It is also an admitted position on record before transferring the petitioner, the respondent company has failed to follow the mandatory provisions of sections 33 and 9-A of the Act.

27. Verily, it is satisfactorily proved on record that from the attendant facts and circumstances of the case that neither there is any retrenchment compensation nor any retrenchment notice has been paid/issued to the petitioner. Even, neither any show cause notice nor any chargesheet was served upon the petitioner before terminating her services. Further, neither there is any express permission in writing nor approval has been obtained from the competent authority *i.e* before whom the proceedings were pending on account of raising the demand notice dated 27.9.2013 till the reference decided by this Court *vide* award dated 30.7.2019.

28. Undoubtedly, the respondent has tried to establish on record that the petitioner herself has abandoned the job as she failed to resume her duties at the transferred place.

29. Moreover, it is a matter of common parlance that the abandonment has to be proved by the employer like any other misconduct. Merely on the pretext that the workman has failed to report for discharging his duties, it cannot be presumed that the petitioner either left the job or abandoned the same. Simply because a workman fails to report for duty, it cannot be presumed that she has left/abandoned the job. There is neither any oral or documentary evidence on record on the part of the respondent to show that any show cause notice was served upon the petitioner calling upon him to join his duties. Absence from duty is a serious misconduct. As such the plea of abandonment put forth by the respondent/employer is not established.

30. Consequently, the defence of the respondent is also to the effect that the services of the petitioner were never been terminated rather she herself has abandoned his job by not resuming her duties at transferred place. It is also borne out form the record that no disciplinary action was initiated against the petitioner by the respondent because of the alleged absence from duty. At the cost of repetition, the respondent has miserably failed to prove abandonment on record as no warning letter or chargesheet was issued to her.

31. In my humble opinion, an outright support has been drawn from the judgment rendered by the Hon'ble Apex Court in case titled as **G. T. Lad vs. Chemicals and Fibres of India 1979 (1) SCC 590** that to constitute abandonment there must be total or complete giving up of duties so as to indicate an intention not to resume the same. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case. It must be total and under such circumstances

as clearly to indicate an absolute relinquishment. The intention may be inferred from the acts and conduct of the party.

32. Further, it has further been held by the Hon'ble Apex Court in **M/s Scooters India Ltd., Vs. M. Mohammad Yaqub 2011 (1) SCC 61 that:** "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls." It was further held that: "The principles of natural justice were required to be followed by giving opportunity to the workman. Para 12 is relevant and is reproduced as under:

> "The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been complied within this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without following the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

33. Therefore, keeping in view the law laid down by the Hon'ble Apex Court (Supra) and keeping in view the attendant facts and circumstances is present case, I have no hesitation in coming to the conclusion that the respondent has failed to prove on record that the petitioner had herself abandoned the job and she was afforded reasonable opportunities of being heard rather her services were terminated by the respondent on the ground of alleged abandonment.

34. Henceforth, keeping in view of my aforesaid discussion, it is proved on record that the termination of the services of the petitioner from service in in clear cut violation of the provisions of section 33 of the Act. The termination of the petitioner is, thus, set aside and quashed. The petitioner is held entitled for re-instatement forthwith on the same post with seniority and continuity in service from the date of her disengagement. The petitioner is claiming all consequential benefits *i.e* back-wages etc. The petitioner is aged 45 years. There is no averment either in the claim petition or by way of tendering affidavit that the petitioner was not gainfully employed during the period of termination. Though, she submitted that she was at the verge of starvation having no source of income available with her. In my humble opinion a person aged 45 years would not remain without work and earn her livelihood for pretty long period of seven years with effect from 2.4.2014, the date of termination. Accordingly both these issues are decided in favour of the petitioner and against the respondent.

ISSUES NO. 3 & 4:

35. In order to prove this issue no specific evdeince has been led by the respdonent which could go to show as to show the present claim petition is not maintainable and how the petitioner is estopped from filing of present applciation. Moreover, in view of my findings on issues no. 1 and 2, above, I find nothing wrong with this petition which is perfectably maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respodnent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 4, the application filed by the petitioner succeeds and is hereby allowed. Resultantly, the respondent company is directed to re-instate the petitioner with seniority and continuity. However, the petitioner is not entitled to any back-wages. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 11th day of May, 2022.

Sd/-
RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF Sh. RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number	:	154 of 2019
Instituted on	:	5.11.2019
Decided on	:	11.5.2022

Sarita Rawat w/o Shri Tirath Rawat c/o Birbal Kumar r/o VPO Taksal, Tehsil Kasauli, District Solan, H.P. ..*Petitioner.*

Versus

M/s Ind-Swift Ltd. Plot No. 23 and 17-B, Sector-2, Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager ..*Respondent.*

Petition/Application under section 33-A of the Industrial Disputes Act.

For the Applicant	:	Shri R.K Khidtta, Ld. Advocate.
For the Respondent	:	Shri Upender Sharma, Advocate.

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) filed by Sarita Rawat (hereinafter to be referred as petitioner) against M/s Ind-Swift Ltd. (hereinafter to be referred as the respondent).

2. Material facts necessary for the disposal of the present petition are thus that the workers of the respondent company were not getting the service benefits and due to adamant attitude of the respondent company no settlement was arrived at between the parties. The petitioner raised demand *vide* demand notice dated 11.7.2013 to which the conciliation proceedings were initiated but failed and as such the appropriate government sent the reference to this Court *vide* reference no. 84 of 2014, which was partly allowed by this Court *vide* award dated 30.7.2019. During the pendency of the proceedings, the respondent company terminated the services of the petitioner *w.e.f.* 2.4.2014 in violation of section 33 of the Act. The termination/dismissal of the services of the petitioner by the respondent without any prior permission/approval during the pendency of the reference is totally wrong and arbitrary.

4. The following prayer clause has been appended in the footnote of the petition, which reads as under:

> "In view of the submissions made hereinabove, it is therefore most humbly prayed that the application filed by the applicant may kindly be allowed and the dismissal of the services of the applicant **w.e.f.** 2.4.2014 during the pendency of the reference petition may kindly be held illegal and the respondent company may kindly be directed to allow the applicant to work on the same post with all service benefits including full back-wages and respondent company may kindly be punished for the violation of the mandatory provisions of Industrial Disputes Act, 1947 and may also be burdened with heavy cost of his application amounting to ₹ 50000/- and may kindly be further directed to pay the damages to the tune of ₹200000/- so that the respondent may not adhere to violate the mandatory provisions of the Industrial Disputes Act."

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections of maintainability, not approached the Court with clean hands, suppression of material facts and estoppel have been raised.

6. On merits, it is denied that the workers working with the respondent company were not getting the service benefits. Reply to demand notice dated 4.9.2013 was filed. It is denied that the respondent company during the pendency of the proceedings terminated the services of the petitioner *w.e.f.* 2.4.2014. It is submitted that the due to continuous losses in Parwanoo Unit, it was mutually agreed and decided by the management and workers to transfer the workers to other locations/units to save their livelihood *i.e* Baddi. The petitioner herself voluntarily abandoned the job by not joining her duties at the transferred place. Rest of the contests have been denied. It is therefore prayed that in view of the submission made hereinabove it is most respectfully prayed that the application of the petitioner may kindly be dismissed with cost in the interest of justice

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the petition.

8. On elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 20.11.2021.

1. Whether the termination of the services of the petitioner during the pendency of the reference petition to be held illegal and unjustified? ...*OPA.*

2. If issue no.1 is proved in affirmative, then what sort of relief the petitioner is entitled to? ...*OPA.*

3. Whether the petition is not maintainable in the present form? ...*OPR.*

4. Whether the petitioner is estopped to file and maintain the present application due to her own act, deed, conduct and acquiescence? ...*OPR.*

5. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes
Issue No. 2	Entitled to reinstatement with seniority and continuity but without back-wages.
Issue No. 3	No
Issue No. 4	No
Relief.	Application allowed, as per operative part of order

REASONS FOR FINDINGS

ISSUES NO.1 & 2:

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. To substantiate her case, the petitioner namely Smt. Sarita Rawat appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A). She also tendered in evidence demand notice (PW-1/B) and copy of judgment (PW-1/C).

14. In cross-examination, she denied that they led strike in the respondent company on 5.4.2013. She further denied that on 15.5.2013, settlement was arrived in between the management and the workers. She admitted that there is no reference in the demand notice regarding settlement. She denied that on 5.6.2014 the management had informed her that the company is not in position to run its Parwanoo unit. She further denied that after the Parwanoo unit became sick the workmen were given the option to name their choice places to be posted. She admitted that transfer orders were issued. She denied that they have refused to receive transfer orders and she did not join at Baddi unit. She further denied that 150 workers had joined at Baddi Unit. She denied that she was not terminated by the company.

15. In order to rebut, the respondent examined one Shri Shankar Sharma as (RW-1), who tendered in evidence his affidavit (RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in to evidence reply to the demand notice Mark RA, transfer order dated 8.4.2014 (RW-1/B), absent letter (RW-1/C) and copy of standing orders (RW-1/D).

16. In cross-examination, he admitted that the petitioner along-with 102 workers issued the demand notice (PW-1/B) to the respondent. He further admitted that the demand notice was referred to this Court *vide* notification sent by the Labour Commissioner, registered as Reference no. 84 of 2014 with this Court which was answered in favour of the petitioner. He denied that the petition was terminated from service from 21.5.2014. He volunteered that the petitioner has abandoned the job in the event of transfer. He admitted that the services of the petitioner have been terminated *vide* letter dated 21.5.2014. He further admitted that the respondent is ready to take back the petitioner. He admitted that no show cause notice or chargesheet was issued to the petitioner. He further admitted that no enquiry was conducted. He also admitted that no application for approval for termination was filed in this Court. He admitted that demand notice dated 11.7.2013 was pending.

17. This is the entire oral as well as documentary evidence led from the side of the parties.

18. Shri R.K Khidtta, Learned counsel for the applicant has contended with all vehemence that the applicant alongwith other workers had approached this Court for the redressal of their grievances by filing the present application under section 33-A of the Act as the reference which has been sent by the appropriate government to this Court for legal adjudication stands partly answered in favour of the petitioner *vide* award dated 30.7.2019. This Court *vide* award dated 30.7.2019, directed the respondent to pay the arrears of enhanced wages to the petitioners payable from Jan., 2013 till April, 2013 as was being paid *w.e.f.* May 2013, within a period of three months. During the pendency of the reference petition, the respondent company had terminated the services of the petitioner which is totally illegal and unjust being in violation of the provisions of section 33 of the Act. The termination of the services of the petitioner during the pendency of the proceedings has been issued without following any procedure as envisaged under law. Neither any show cause notice has been issued nor paid any compensation before terminating the services of the petitioner. He prayed that the illegal termination order may kindly be set aside and the petitioner may kindly be ordered to be reinstated in service with all consequential service benefits.

19. Per contra, Shri Upender Sharma, Ld. Counsel for the respondent argued that the services of the petitioner have been transferred from its Parwanoo Unit to Baddi Unit and most of the workers have joined their duties at transferred place but the petitioner miserably failed to resume her duties at transferred place which clearly show that the petitioner is not interested to join her duties at transferred place and abandoned the job on her own will on account of continuous absenteeism on her part. It is therefore prayed that the application filed by the petitioner may kindly be dismissed.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the applicant, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Before, proceeding further, it is important to reproduce sections 33-A and 9-A of the Act, which reads as under:

> **"33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.—**Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention may, make a complaint in writing in the prescribed manner—
>
> (a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."

22. Section 9-A of the Act is reproduced as under:

"9A. Notice of change.—No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty- one days of giving such notice: Provided that no notice shall be required for effecting any such change—

(a) where the change is effected in pursuance of any settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

23. Therefore, now, it has to be seen as to whether the respondent company has contravened the provisions of section 33- A of the Act or not and further as to whether there is any change in the service condition of the petitioner or not?

24. Thus, from the careful examination of the entire case record, it is manifestly clear on record that the services of the applicant were engaged by the respondent company at its Parwanoo unit and the workers of respondent company raised demand notice, which was finally sent to this Court as reference by the appropriate government for adjudication. The said reference was registered as Reference no. 84 of 2014 and was decided by my Ld. Predecessor *vide* award dated 30.7.2019. It is also clear from the record that during the pendency of reference petition, the respondent company *vide* order dated 21.4.2014 terminated the services of the applicant. From the side of the respondent company it is pleaded that the services of the petitioner have been transferred from its Parwanoo Unit to Baddi unit due to heavy losses and the petitioner had failed to join her duties at transferred place despite issuances of notices dated 8.4.2014 and 21.5.2014, hence, it is assumed that she had abandoned her job. The termination of the services of the petitioner during the pendency of the proceedings were emphatically denied.

25. In the instant case, there is absolutely no denial about the factum of the relationship of employer and employee between the parties. Admittedly, the petitioner and 101 workers working with the respondent company raised their demand notice *vide* demand notice dated 11.7.2013 before the respondent company to be fulfilled by the respondent management. The demand notice was referred to this Court by the appropriate government which was registered as Reference no. 84 of 2014 and was decided on 30.7.2019. The relief part of the award reads as under:

"For the foregoing reasons discussed hereinabove supra, the reference is partly allowed. The respondent is directed to pay the arrears of enhanced wages to the petitioner's payable from Jan., 2013 till April, 2013 as was being paid *w.e.f.* May 2013, within a period of three months from today failing which the same shall carry interest @ 9% per annum."

26. Therefore, it is clearly established on record that there was a pendency of dispute between the parties w.e.f. 27.9.2013 to 31.7.2019. It is alleged from the side of the petitioner that the services of the petitioner have been terminated vide order dated 2.4.2014. The respondent company vide transfer order dated 7.4.2019 transferred the workers from Parwanoo unit to Baddi unit, therefore, it could easily be assumed that there was change in the condition of service either by way of termination order dated 2.4.2014 or by way of transfer order dated 7.9.2019. It is clear that the same has been ordered by the respondent company during the pendency of reference petition no. 84 of 2014 before this Court. Admittedly, the change in service condition etc. remained unchanged under certain circumstances during the pendency of proceedings, however, such change in the condition of service can be ordered with the express permission in writing of the authority concerned before which the proceedings are pending. It is also an admitted position on record before transferring the petitioner, the respondent company has failed to follow the mandatory provisions of sections 33 and 9-A of the Act.

27. Verily, it is satisfactorily proved on record that from the attendant facts and circumstances of the case that neither there is any retrenchment compensation nor any retrenchment notice has been paid/issued to the petitioner. Even, neither any show cause notice nor any chargesheet was served upon the petitioner before terminating her services. Further, neither there is any express permission in writing nor approval has been obtained from the competent authority i.e before whom the proceedings were pending on account of raising the demand notice dated 27.9.2013 till the reference decided by this Court *vide* award dated 30.7.2019.

28. Undoubtedly, the respondent has tried to establish on record that the petitioner herself has abandoned the job as she failed to resume her duties at the transferred place.

29. Moreover, it is a matter of common parlance that the abandonment has to be proved by the employer like any other misconduct. Merely on the pretext that the workman has failed to report for discharging his duties, it cannot be presumed that the petitioner either left the job or abandoned the same. Simply because a workman fails to report for duty, it cannot be presumed that she has left/abandoned the job. There is neither any oral or documentary evidence on record on the part of the respondent to show that any show cause notice was served upon the petitioner calling upon him to join his duties. Absence from duty is a serious misconduct. As such the plea of abandonment put forth by the respondent/employer is not established.

30. Consequently, the defence of the respondent is also to the effect that the services of the petitioner were never been terminated rather she herself has abandoned his job by not resuming her duties at transferred place. It is also borne out form the record that no disciplinary action was initiated against the petitioner by the respondent because of the alleged absence from duty. At the cost of repetition, the respondent has miserably failed to prove abandonment on record as no warning letter or chargesheet was issued to her.

31. In my humble opinion, an outright support has been drawn from the judgment rendered by the Hon'ble Apex Court in case titled as **G. T. Lad vs. Chemicals and Fibres of India 1979 (1) SCC 590** that to constitute abandonment there must be total or complete giving up of duties so as to indicate an intention not to resume the same.Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case. It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The intention may be inferred from the acts and conduct of the party.

32. Further, it has further been held by the **Hon'ble Apex Court in M/s Scooters India Ltd., Vs. M. Mohammad Yaqub 2011 (1) SCC 61 that:** "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls." It was further held that: "The principles of natural justice were required to be followed by giving opportunity to the workman. Para 12 is relevant and is reproduced as under:

> "The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been complied with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without following the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

33. Therefore, keeping in view the law laid down by the Hon'ble Apex Court (Supra) and keeping in view the attendant facts and circumstances of the present case, I have no hesitation in coming to the conclusion that the respondent has failed to prove on record that the petitioner had herself abandoned the job and she was afforded reasonable opportunities of being heard rather her services were terminated by the respondent on the ground of alleged abandonment.

34. Henceforth, keeping in view of my aforesaid discussion, it is proved on record that the termination of the services of the petitioner from service is clear cut violation of the provisions of section 33 of the Act. The termination of the petitioner is, thus, set aside and quashed. The petitioner is held entitled for re-instatement forthwith on the same post with seniority and continuity in service from the date of her disengagement. The petitioner is claiming all consequential benefits i.e back-wages etc. The petitioner is aged 50 years. There is no averment either in the claim petition or by way of tendering affidavit that the petitioner was not gainfully employed during the period of termination. Though, she submitted that she was at the verge of starvation having no source of income available with her. In my humble opinion a person aged 50 years would not remain without work and earn her livelihood for pretty long period of seven years with effect from 2.4.2014, the date of termination. Accordingly both these issues are decided in favour of the petitioner and against the respondent.

ISSUES NO. 3 & 4:

35. In order to prove this issue no specific evdeince has been led by the respdonent which could go to show as to show the present claim petition is not maintainable and how the petitioner is

estopped from filing of present applciation. Moreover, in view of my findings on issues no. 1 and 2, above, I find nothing wrong with this petition which is perfectably maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respodnent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 4, the application filed by the petitioner succeeds and is hereby allowed. Resultantly, the respondent company is directed to re-instate the petitioner with seniority and continuity. However, the petitioner is not entitled to any back-wages. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 11th day of May, 2022.

Sd/-
RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF Sh. RAJESH TOMAR PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

Application Number	:	155 of 2019
Instituted on	:	5.11.2019
Decided on	:	11.5.2022

Birbal Kumar s/o Shri Bharam Dass r/o VPO Taksal, Tehsil Kasauli, District Solan, H.P.
...Petitioner.

Versus

M/s Ind-Swift Ltd. Plot No. 23 and 17-B, Sector-2, Parwanoo, Tehsil Kasauli, District Solan, H.P. through its Factory Manager. *...Respondent.*

Petition/Application under section 33-A of the Industrial Disputes Act.

For the Applicant : Shri R.K. Khidtta, Ld. Advocate

For the Respondent : Shri Upender Sharma, Advocate

ORDER

This is an usual petition under section 33-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) filed by Birbal Kumar (hereinafter to be referred as petitioner) against M/s Ind-Swift Ltd. (hereinafter to be referred as the respondent).

2. Material facts necessary for the disposal of the present petition are thus that the workers of the respondent company were not getting the service benefits and due to adamant attitude of the respondent company no settlement was arrived at between the parties. The petitioner raised demand *vide* demand notice dated 11.7.2013 to which the conciliation proceedings were initiated but failed and as such the appropriate government sent the reference to this Court vide reference No. 84 of 2014, which was partly allowed by this Court *vide* award dated 30.7.2019. During the pendency of the proceedings, the respondent company terminated the services of the petitioner *w.e.f.* 2.4.2014 in violation of section 33 of the Act. The termination/dismissal of the services of the petitioner by the respondent without any prior permission/approval during the pendency of the reference is totally wrong and arbitrary.

4. The following prayer clause has been appended in the footnote of the petition, which reads as under:

> "In view of the submissions made hereinabove, it is therefore most humbly prayed that the application filed by the applicant may kindly be allowed and the dismissal of the services of the applicant *w.e.f.* 2.4.2014 during the pendency of the reference petition may kindly be held illegal and the respondent company may kindly be directed to allow the applicant to work on the same post with all service benefits including full back-wages and respondent company may kindly be punished for the violation of the mandatory provisions of Industrial Disputes Act, 1947 and may also be burdened with heavy cost of his application amounting to ₹ 50000/- and may kindly be further directed to pay the damages to the tune of ₹ 200000/- so that the respondent may not adhere to violate the mandatory provisions of the Industrial Disputes Act."

5. The lis was resisted and contested by respondent management by filing written reply wherein preliminary objections of maintainability, not approached the Court with clean hands, suppression of material facts and estoppel have been raised.

6. On merits, it is denied that the workers working with the respondent company were not getting the service benefits. Reply to demand notice dated 4.9.2013 was filed. It is denied that the respondent company during the pendency of the proceedings terminated the services of the petitioner *w.e.f.* 2.4.2014. It is submitted that the due to continuous losses in Parwanoo Unit, it was mutually agreed and decided by the management and workers to transfer the workers to other locations/units to save their livelihood *i.e* Baddi. The petitioner himself voluntarily abandoned the job by not joining his duties at the transferred place. Rest of the contests have been denied. It is therefore prayed that in view of the submission made hereinabove it is most respectfully prayed that the application of the petitioner may kindly be dismissed with cost in the interest of justice.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the petition.

8. On elucidating the pleading of parties, the following issues were struck down for its final determination vide Court order dated 20.11.2021:

1. Whether the termination of the services of the petitioner during the pendency of the reference petition to be held illegal and unjustified? ...*OPA.*

2. If issue no.1 is proved in affirmative, then what sort of relief the petitioner is entitled to? ...*OPA.*

3. Whether the petition is not maintainable in the present form? ...*OPR.*

4. Whether the petitioner is estopped to file and maintain the present application due to her own act, deed, conduct and acquiescence? ...*OPR.*

5. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes
Issue No. 2	Entitled to reinstatement with seniority and continuity but without back-wages.
Issue No. 3	No
Issue No. 4	No
Relief.	Application allowed, as per operative part of order

REASONS FOR FINDINGS

ISSUES NO.1 & 2:

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. To substantiate his case, the petitioner namely Shri Birbal Kumar appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A). He also tendered in evidence demand notice (PW-1/B) and copy of judgment (PW-1/C).

14. In cross-examination, he denied that they led strike in the respondent company on 5.4.2013. He further denied that on 15.5.2013, settlement was arrived in between the management and the workers. He admitted that there is no reference in the demand notice regarding settlement. He denied that on 5.6.2014 the management had informed him that the company is not in position to run its Parwanoo unit. He further denied that after the Parwanoo unit became sick the workmen were given the option to name their choice places to be posted. He admitted that transfer orders were issued. He denied that they have refused to receive transfer orders and he did not join at Baddi unit. He further denied that 150 workers had joined at Baddi Unit. He denied that he was not terminated by the company.

15. In order to rebut, the respondent examined one Shri Shankar Sharma as (RW-1), who tendered in evidence his affidavit (RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in to evidence reply to the demand notice Mark RA, transfer order dated 8.4.2014 (RW-1/B), absent letter (RW-1/C) and copy of standing orders (RW-1/D).

16. In cross-examination, he admitted that the petitioner along-with 102 workers issued the demand notice (PW-1/B) to the respondent. He further admitted that the demand notice was referred to this Court vide notification sent by the Labour Commissioner, registered as Reference no. 84 of 2014 with this Court which was answered in favour of the petitioner. He denied that the petition was terminated from service from 21.5.2014. He volunteered that the petitioner has abandoned the job in the event of transfer. He admitted that the services of the petitioner have been terminated vide letter dated 21.5.2014. He further admitted that the respondent is ready to take back the petitioner. He admitted that no show cause notice or chargesheet was issued to the petitioner. He further admitted that no enquiry was conducted. He also admitted that no application for approval for termination was filed in this Court. He admitted that demand notice dated 11.7.2013 was pending.

17. This is the entire oral as well as documentary evidence led from the side of the parties.

18. Shri R.K Khidtta, Learned Counsel for the applicant has contended with all vehemence that the applicant alongwith other workers had approached this Court for the redressal of their grievances by filing the present application under section 33-A of the Act as the reference which has been sent by the appropriate government to this Court for legal adjudication stands partly answered in favour of the petitioner vide award dated 30.7.2019. This Court vide award dated 30.7.2019, directed the respondent to pay the arrears of enhanced wages to the petitioners payable from Jan., 2013 till April, 2013 as was being paid *w.e.f.* May 2013, within a period of three months. During the pendency of the reference petition, the respondent company had terminated the services of the petitioner which is totally illegal and unjust being in violation of the provisions of section 33 of the Act. The termination of the services of the petitioner during the pendency of the proceedings has been issued without following any procedure as envisaged under law. Neither any show cause notice has been issued nor paid any compensation before terminating the services of the petitioner. He prayed that the illegal termination order may kindly be set aside and the petitioner may kindly be ordered to be reinstated in service with all consequential service benefits.

19. Per contra, Shri Upender Sharma, Ld. Counsel for the respondent argued that the services of the petitioner have been transferred from its Parwanoo Unit to Baddi Unit and most of the workers have joined their duties at transferred place but the petitioner miserably failed to resume her duties at transferred place which clearly show that the petitioner is not interested to join her duties at transferred place and abandoned the job on her own will on account of continuous absenteeism on her part. It is therefore prayed that the application filed by the petitioner may kindly be dismissed.

20. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the applicant, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Before, proceeding further, it is important to reproduce sections 33-A and 9-A of the Act, which reads as under:

> **"33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.—**Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention may, make a complaint in writing in the prescribed manner—
>
> (a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."

22. Section 9-A of the Act is reproduced as under:

"9A. Notice of change.—No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty- one days of giving such notice: Provided that no notice shall be required for effecting any such change—

(a) where the change is effected in pursuance of any settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

23. Therefore, now, it has to be seen as to whether the respondent company has contravened the provisions of section 33-A of the Act or not and further as to whether there is any change in the service condition of the petitioner or not?

24. Thus, from the careful examination of the entire case record, it is manifestly clear on record that the services of the applicant were engaged by the respondent company at its Parwanoo unit and the workers of respondent company raised demand notice, which was finally sent to this Court as reference by the appropriate government for adjudication. The said reference was registered as Reference No. 84 of 2014 and was decided by my Ld. predecessor *vide* award dated 30.7.2019. It is also clear from the record that during the pendency of reference petition, the respondent company *vide* order dated 21.4.2014 terminated the services of the applicant. From the side of the respondent company it is pleaded that the services of the petitioner have been transferred from its Parwanoo Unit to Baddi unit due to heavy losses and the petitioner had failed to join his duties at transferred place despite issuances of notices dated 8.4.2014 and 21.5.2014, hence, it is assumed that he had abandoned his job. The termination of the services of the petitioner during the pendency of the proceedings were emphatically denied.

25. In the instant case, there is absolutely no denial about the factum of the relationship of employer and employee between the parties. Admittedly, the petitioner and 101 workers working with the respondent company raised their demand notice *vide* demand notice dated 11.7.2013 before the respondent company to be fulfilled by the respondent management. The demand notice was referred to this Court by the appropriate government which was registered as Reference No. 84 of 2014 and was decided on 30.7.2019. The relief part of the award reads as under:

"For the foregoing reasons discussed hereinabove supra, the reference is partly allowed. The respondent is directed to pay the arrears of enhanced wages to the petitioner's payable from Jan., 2013 till April, 2013 as was being paid *w.e.f.* May 2013, within a period of three months from today failing which the same shall carry interest @ 9% per annum."

26. Therefore, it is clearly established on record that there was a pendency of dispute between the parties *w.e.f.* 27.9.2013 to 31.7.2019. It is alleged from the side of the petitioner that the services of the petitioner have been terminated vide order dated 2.4.2014. The respondent company *vide* transfer order dated 8.4.2014 transferred the workers from Parwanoo unit to Baddi unit, therefore, it could easily be assumed that there was change in the condition of service either by way of termination order dated 2.4.2014 or by way of transfer order dated 8.4.2014. It is clear that the same has been ordered by the respondent company during the pendency of reference petition no. 84 of 2014 before this Court. Admittedly, the change in service condition etc. remained unchanged under certain circumstances during the pendency of proceedings, however, such change in the condition of service can be ordered with the express permission in writing of the authority concerned before which the proceedings are pending. It is also an admitted position on record before transferring the petitioner, the respondent company has failed to follow the mandatory provisions of sections 33 and 9-A of the Act.

27. Verily, it is satisfactorily proved on record that from the attendant facts and circumstances of the case that neither there is any retrenchment compensation nor any retrenchment notice has been paid/issued to the petitioner. Even, neither any show cause notice nor any chargesheet was served upon the petitioner before terminating his services. Further, neither there is any express permission in writing nor approval has been obtained from the competent authority *i.e* before whom the proceedings were pending on account of raising the demand notice dated 27.9.2013 till the reference decided by this Court *vide* award dated 30.7.2019.

28. Undoubtedly, the respondent has tried to establish on record that the petitioner himself has abandoned the job as he failed to resume his duties at the transferred place.

29. Moreover, it is a matter of common parlance that the abandonment has to be proved by the employer like any other misconduct. Merely on the pretext that the workman has failed to report for discharging his duties, it cannot be presumed that the petitioner either left the job or abandoned the same. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is neither any oral or documentary evidence on record on the part of the respondent to show that any show cause notice was served upon the petitioner calling upon him to join his duties. Absence from duty is a serious misconduct. As such the plea of abandonment put forth by the respondent/employer is not established.

30. Consequently, the defence of the respondent is also to the effect that the services of the petitioner were never been terminated rather he himself has abandoned his job by not resuming his duties at transferred place. It is also borne out from the record that no disciplinary action was initiated against the petitioner by the respondent because of the alleged absence from duty. At the cost of repetition, the respondent has miserably failed to prove abandonment on record as no warning letter or chargesheet was issued to him.

31. In my humble opinion, an outright support has been drawn from the judgment rendered by the Hon'ble Apex Court in case titled as **G. T. Lad vs. Chemicals and Fibres of India 1979 (1) SCC 590** that to constitute abandonment there must be total or complete giving up of duties so as to indicate an intention not to resume the same. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case. It must be total and under such circumstances

as clearly to indicate an absolute relinquishment. The intention may be inferred from the acts and conduct of the party.

32. Further, it has further been held by the Hon'ble Apex Court in **M/s Scooters India Ltd., Vs. M. Mohammad Yaqub 2011 (1) SCC 61 that:** "When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls." It was further held that: "The principles of natural justice were required to be followed by giving opportunity to the workman. Para 12 is relevant and is reproduced as under:

> "The question which then arises is whether the principles of natural justice were followed in this case. As has been set out herein above Mr. Swroop had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been complied with in this case. However, the material on record indicates otherwise. The Labour Court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer, he was still not allowed to enter the premises. The evidence is that inspite of slip Ex. W.2, he was prevented from joining duty when he attempted to join duty. The slip Ex. W.2 had been signed by the Security Inspector of the appellant. This showed that the respondent had reported for work. As against this evidence, the appellant has not led any evidence to show that the workman had not report for duty. Even, though the slip Ex. W.2 had been proved by the workman, the Security Inspector, one Mr. Shukla was not examined by the appellant. Further the evidence of the senior Time Keeper of the appellant established that the appellant had worked for more than 240 days within period of 12 calendar months immediately preceding the date of termination of service. This was proved by a joint inspector report, which was marked as Ext. 45/A. It was on the basis of this material and the evidence that the Labour Court came to the conclusion that there was retrenchment without following the provisions of law. As the workman was not allowed to join duty, Standing Orders 9.3.12 could not have been used for terminating his services."

33. Therefore, keeping in view the law laid down by the Hon'ble Apex Court (Supra) and keeping in view the attendant facts and circumstances of the present case, I have no hesitation in coming to the conclusion that the respondent has failed to prove on record that the petitioner had himself abandoned the job and he was afforded reasonable opportunities of being heard rather his services were terminated by the respondent on the ground of alleged abandonment.

34. Henceforth, keeping in view of my aforesaid discussion, it is proved on record that the termination of the services of the petitioner from service is clear cut violation of the provisions of section 33 of the Act. The termination of the petitioner is, thus, set aside and quashed. The petitioner is held entitled for re-instatement forthwith on the same post with seniority and continuity in service from the date of his disengagement. The petitioner is claiming all consequential benefits *i.e* back-wages etc. The petitioner is aged 50 years. There is no averment either in the claim petition or by way of tendering affidavit that the petitioner was not gainfully employed during the period of termination. Though, he submitted that he was at the verge of starvation having no source of income available with him. In my humble opinion a person aged 50 years would not remain without work and earn his livelihood for pretty long period of seven years with effect from 2.4.2014, the date of termination. Hence, he is not entitled to any back-wages.. Accordingly both these issues are decided in favour of the petitioner and against the respondent.

ISSUES NO. 3 & 4.

35. In order to prove this issue no specific evidence has been led by the respdonent which could go to show as to show the present claim petition is not maintainable and how the petitioner is

estopped from filing of present applciation. Moreover, in view of my findings on issues no. 1 and 2, above, I find nothing wrong with this petition which is perfectably maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respodnent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 4, the application filed by the petitioner succeeds and is hereby allowed. Resultantly, the respondent company is directed to re-instate the petitioner with seniority and continuity. However, the petitioner shall not be entitled to any back-wages. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 11th day of May, 2022.

Sd/-
RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

18.5.2022 Re-called.

Present:
Shri Vishal Sharma, Advocate for petitioner
Shri Rajiv Sharma, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri Vishal Sharma, Ld. Counsel for the petitioner has vehemently contended that the dismissal of the services of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act). It is contended that this Court/Tribunal *vide* its award/order dated 6.1.2022, passed in Reference no. 191 of 2017, in case titled as Vivek Sharma *Vs*. M/s Zamil Air Conditioners Ltd. concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is just, fair and proper. There is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family *i.e* old age parents and children. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he caused beatings with his co-worker during the period of his duties. It is argued that the act of misconduct/misbehavior allegedly committed by the petitioner regarding the fight with the co-worker leading to the dismissal of the petition, on the sole ground, is not

sustainable. The punishment awarded by the respondent company on the basis of enquiry is not at all warranted. It is therefore prayed that lenient view may please be taken against him.

2. Per contra, Shri Rajiv Sharma, Advocate for the respondent company strenuously contended that this Court in its detailed findings passed *vide* award/order dated 6.1.2022 in Reference no. 191 of 2017, case titled as Vivek Sharma *Vs.* M/s Zamil Air Conditioners Ltd. has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry which is satisfactorily proved on record. There is no question of awarding the less punishment. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carrier no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Before proceeding further, I would like to invite the attention the parties to provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

> **11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—**Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

5. By now it is fairly well settled that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552.** The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015,** holding that the "doctrine of proportionality" is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. The facts narrated and discussed hereinabove clearly show that the gravity of the misconduct has not been duly considered by the disciplinary authority while imposing sentence. It is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner.

7. Their Lordship of Hon'ble Supreme Court in case **tiled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

> "The power under section 11-A imposes *vide* discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

8. Therefore, in the exposition of law enumerated on the aforesaid point as well as bearing in mind the true intent, impact and scope of object of section 11-A, now, I would like to examine the merits of the case of the petitioner.

9. In the instant case, it is proved on record that the petitioner belongs to a poor strata and downtrend society. He is only bread earner of the family. He has to maintain his wife, children and old age parents. The main allegation against the petitioner is that he caused beatings with the co-worker during the discharge of his official duties within the premises of the company. It has ruin not only the working hours but also caused nuisance and bad atmosphere within the premises of the company. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order would not be justified. This Court had given due weightage to the entire facts and circumstances of the case. Though, the domestic enquiry conducted against the petitioner is valid and proper but still this Court is of the considered opinion that the respondent company has miserably failed in justifying its decision/action for dismissing the services of the petitioner.

10. Admittedly, the petitioner had worked in the capacity of permanent employee with the respondent since April 2011 and he was dismissed from service *vide* dismissal order dated 21.3.2015. The petitioner had rendered service of near about four years with the respondent company. There was no complaint from any quarter regarding the misconduct and misbehavior of the petitioner. The past conduct of the petitioner is very important. After applying the principles as laid down in section 11-A of the Act while excessing my discretionary power, I hereby conclude that punishment imposed upon the petitioner *i.e* dismissal from service, is disproportionate and not commensurating with the allegations levelled against the petitioner.

11. Thus, while holding that the respondent has conducted the domestic enquiry as per the provisions of the Act and the Standing Orders, it is however held that the punishment imposed by the disciplinary authority is disproportionate to misconduct alleged. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages is itself a punishment imposed upon the workman. None the less keeping in view the totality of circumstances discussed hereinabove

12. Now, it has to be seen as to what benefit the petitioner is entitled to. It has been argued by Ld. Counsel for the respondent that the factory has been closed. In my humble opinion, it would not appropriate to order for the re-instatement of the petitioner, hence, a lump sum compensation amounting to ₹ 75,000/- (₹ Seventy Five Thousand only) is awarded in favour of the petitioner.

13. Bearing in mind the peculiar attendant facts and circumstances of the case vis-a-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of ₹ 75,000/- (₹ Seventy Five Thousand only) as lump sum compensation to the petitioner. It is expressly made clear that apart from lump sum compensation, the petitioner is entitled for all his legal dues *i.e* gratuity, leave encashment, EPF, ESI etc.

14. The reference is answered in the aforesaid terms. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 18th Day of May, 2022.

Sd/-
RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

18.5.2022 Re-called.

Present:
Shri Neelam Sharma, Advocate for petitioner
Shri Rajiv Sharma, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri Neelam Sharma, Ld. Counsel for the petitioner has vehemently contended that the dismissal of the services of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act). It is contended that this Court/Tribunal *vide* its award/order dated 18.12.2021, passed in Reference no. 31 of 2016, in case titled as Kapil Dev *Vs* M/s Twilight Litaka Pharma Ltd. concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is just, fair and proper. There is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he was

found missing from work place and was found sleeping inside the factory premises during his duty hours. It is argued that the act of misconduct/misbehavior allegedly committed by the petitioner regarding missing from work place leading to the dismissal of the petitioner, on the sole ground, is not sustainable. The punishment awarded by the respondent company on the basis of enquiry is not at all warranted. It is therefore prayed that lenient view may please be taken against him.

2. Per contra, Shri Rajiv Sharma, Advocate for the respondent company strenuously contended that this Court in its detailed findings passed *vide* award/order dated 18.12.2021, passed in Reference no. 31 of 2016, in case titled as Kapil Dev *Vs* M/s Twilight Litaka Pharma Ltd. has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry which is satisfactorily proved on record. There is no question of awarding the less punishment. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carrier no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Before proceeding further, I would like to invite the attention the parties to provisions of section 11-A of the Act, which is reproduced for the sake of convenience as hereunder:

> **11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—**Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

5. By now it is fairly well settled that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552.** The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in Civil **Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015,** holding that the "doctrine of proportionality" is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. The facts narrated and discussed hereinabove clearly show that the gravity of the misconduct has not been duly considered by the disciplinary authority while imposing sentence. It

is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner.

7. Their Lordship of Hon'ble Supreme Court in case **tiled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

> "The power under section 11-A imposes vide discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

8. In the exposition of law enumerated on the aforesaid point as well as bearing in mind the true intent, impact and scope of object of section 11-A, now, I would like to examine the merits of the case of the petitioner.

9. In the instant case, it is proved on record that the petitioner belongs to a poor strata and downtrend society. He is only bread earner of the family. He has to maintain his wife, children. The main allegation against the petitioner is that he was found missing from work place and was found sleeping inside the factory premises during his duty hours. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order would not be justified. This Court had given due weightage to the entire facts and circumstances of the case. Though, the domestic enquiry conducted against the petitioner is valid and proper but still this Court is of the considered opinion that the respondent company has miserably failed in justifying its decision/action for dismissing the services of the petitioner.

10. Admittedly, the petitioner had worked in the capacity of permanent employee with the respondent since April 2011 and he was dismissed from service *vide* dismissal order dated 21.3.2015. The petitioner had rendered service of near about four years with the respondent company. There was no complaint from any quarter regarding the misconduct and misbehavior of the petitioner. The past conduct of the petitioner is very important. After applying the principles as laid down in section 11-A of the Act while excessing my discretionary power, I hereby conclude that punishment imposed upon the petitioner *i.e* dismissal from service, is disproportionate and not commensurating with the allegations levelled against the petitioner.

11. Thus, while holding that the respondent has conducted the domestic enquiry as per the provisions of the Act and the Standing Orders, it is however held that the punishment imposed by the disciplinary authority is disproportionate to misconduct alleged. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages is itself a punishment imposed upon the workman. None the less keeping in view the totality of circumstances discussed hereinabove

12. Now, it has to be seen as to what benefit the petitioner is entitled to. It has been argued by Ld. Counsel for the respondent that the factory has been closed. In my humble opinion, it would not appropriate to order for the re-instatement of the petitioner, hence, a lump sum compensation amounting to ₹ ……/- (₹……. only) is awarded in favour of the petitioner.

13. Bearing in mind the peculiar attendant facts and circumstances of the case vis-a-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 75,000/- (₹ Seventy Five Thousand only) as lump sum compensation** to the petitioner. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**

14. Here, I would like to point out that while deciding the preliminary issue *vide* order dated 18.12.2021, there is a clerical/typographical mistake in para 17 of the order. Now, the Court on its own motion, correction is made and the para no.17 of order dated 18.12.2021 of the order may be read as under:

> "17. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper."

15. The reference is answered in the aforesaid terms. It is made clear that the award passed by this Court/Tribunal shall remain part and parcel of order dated 18.12.2021 whereby this Court has decided the preliminary issue. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 18th day of May, 2022.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

18.5.2022 Re-called.

Present:
Shri Neelam Sharma, Advocate for petitioner
Respondent already ex-parte

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri Neelam Sharma, Ld. Counsel for the petitioner has vehemently contended that the dismissal of the services of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act). It is contended that this Court/Tribunal *vide* its award/order dated 18.12.2021, passed in Reference no. 44 of 2014, in case titled as Rakesh Singh *Vs*. M/s Drish Shoes Ltd. concluded that the domestic enquiry conducted by the enquiry officer against the petitioner is set aside being in violation of principles of natural justice. He further

argued that *vide* order dated 18.12.2021, this Court afforded the opportunity to the respondent to prove the misconduct by leading evidence before this Court/Tribunal and since the respondent failed to lead any evidence before this Court, hence, he does not want to lead any fresh evidence and the evidence already recorded may kindly be read. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that at the time of his suspension he committed theft in respect of iron pipe from the trolley in which waste material had been loaded outside the factory gate. It is argued that the act of misconduct/misbehavior allegedly committed by the petitioner regarding theft from outside the factory gate leading to the dismissal of the petitioner, on the sole ground, is not sustainable. The punishment awarded by the respondent company on the basis of enquiry is not at all warranted. It is therefore prayed that lenient view may please be taken against him.

2. Here, it is important to mention that this Court *vide* order dated 18.12.2021, afforded the opportunity to the respondent to prove the misconduct by leading evidence before this Court/Tribunal but the respondent in its wisdom thought it prudent not to appear, despite having the knowledge that the case was listed for recording the evidence of the respondent to prove misconduct attributed to the petitioner. They were set *ex-parte vide* an order dated 25.2.2022.

3. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner and have also scrutinized the entire case record with minute care, caution and circumspection.

4. Before proceeding further, I would like to invite the attention the parties to provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

> **11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—**Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

5. By now it is fairly well settled that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552.** The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015,** holding that the "doctrine of proportionality" is to be applied to the facts and situation of

each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. Since, the respondent company has failed to prove the alleged misconduct of the petitioner by leading evidence before this Court/Tribunal, it is thus apparent that the punishment imposed is indeed disproportionate to the misconduct attributed and alleged to the petitioner.

7. Their Lordship of Hon'ble Supreme Court in case **tiled as U.B. Gadhe & Ors. Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd. Civil Appeal No. 892 of 2007 decided on 28.9.2007 that:**

> "The power under section 11-A imposes *vide* discretion which has been vested in the Tribunal in the matter of awarding relief according to the attendant facts and circumstances of the case. It is not necessary to go into in detail regarding the power exercisable under section 11-A of the Act. Power under the said provision of law has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

8. In the exposition of law enumerated on the aforesaid point as well as bearing in mind the true intent, impact and scope of object of section 11-A, now, I would like to examine the merits of the case of the petitioner.

9. In the instant case, it is proved on record that the petitioner belongs to a poor strata and downtrend society. He is only bread earner of the family. He has to maintain his wife, children. The main allegation against the petitioner is that at the time of his suspension he committed theft in respect of iron pipe from the trolley in which waste material had been loaded outside the factory gate. In this case, it is proved that the domestic enquiry conducted against the petitioner is not fair and proper, however, the respondent company was afforded opportunity to prove the alleged misconduct by leading evidence before this Court/Tribunal, which they failed to do so. Therefore, in my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order would not be justified. This Court had given due vatage to the entire facts and circumstances of the case. This Court is of the considered opinion that the respondent company has miserably failed in justifying its decision/action for dismissing the services of the petitioner.

10. Admittedly, the petitioner had worked in the capacity of permanent employee with the respondent *w.e.f.* 6.12.1990 and he was dismissed from service *vide* dismissal order dated 28.9.2012 (RW-2/L). The petitioner had rendered service of near about twenty two years with the respondent company. There was no complaint from any quarter regarding the misconduct and misbehavior of the petitioner. The past conduct of the petitioner is very important. After applying the principles as laid down in section 11-A of the Act while excessing my discretionary power, I hereby conclude that punishment imposed upon the petitioner *i.e* dismissal from service, is disproportionate and not commensurating with the allegations levelled against the petitioner.

11. Thus, while holding that the respondent has conducted the domestic enquiry in violation of the provisions of the Act and the Standing Orders, it is however held that the

punishment imposed by the disciplinary authority is disproportionate to misconduct alleged. The Hon'ble Supreme Court in Nicholas Piramal's case referred hereinabove supra, has held, even denial of 50% back-wages is itself a punishment imposed upon the workman. None the less keeping in view the totality of circumstances discussed hereinabove.

12. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, it would not appropriate to order for the re-instatement of the petitioner, hence, a lump sum compensation amounting to ₹ ……/- (₹ ……. only) is awarded in favour of the petitioner.

13. Bearing in mind the peculiar attendant facts and circumstances of the case vis-a-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of ₹ ……. as lump sum compensation to the petitioner. However, it is made clear that besides the awarded compensation the petitioner is also held entitled to legal dues such as gratuity, leave encashment, PF/ESI, if any, as per law.

14. The reference is answered in the aforesaid terms. It is made clear that the award passed by this Court/Tribunal shall remain part and parcel of order dated 18.12.2021 whereby this Court has decided the preliminary issue. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 18th day of May, 2022.

Sd/-
RAJESH TOMAR,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

पर्यावरण, विज्ञान एवं प्रौद्योगिकी विभाग

अधिसूचना

शिमला–2, 18 अगस्त, 2022

संख्या एस.टी.ई–ई(5)–2 / 2021.––पर्यावरण संरक्षण अधिनियम, 1986 (1986 का अधिनियम संख्यांक 29) की धारा 5 के अधीन माननीय राष्ट्रीय हरित अधिकरण द्वारा ओ.ए. संख्या 360 / 2015–एन0जी0टी नामतः नेशनल ग्रीन ट्रिब्युनल बार एसोसिएशन बनाम विरेन्द्र सिंह में अवैध खनन के कारण पर्यावरण और पारिस्थितिकी को कारित नुकसान के प्रतिकर की वूसली के लिए जारी आदेश, तारीख 26–02–2021 द्वारा पारित निर्देशों को कार्यान्वित करने के लिए, राज्य सरकार निर्देश जारी करने हेतु सशक्त है;

माननीय राष्ट्रीय हरित अधिकरण ने अपने उपरोक्त आदेश, तारीख 26–02–2021 के पैरा 25 में निर्देश दिया है कि तारीख 30–01–2020 को एक्सपर्ट कमेटी की रिपोर्ट में वर्णित प्रस्ताव–II (अपरोच–II) के संदर्भ में परिकलित प्रतिकर के पैमाने को समस्त राज्यों / केन्द्र शासित प्रदेशों द्वारा अंगीकृत किया जाए और यह कि प्रतिकर की वसूली उक्त आदेश के अनुपालन में की जाए और वसूल किया गया प्रतिकर एक पृथक लेखा में रखा जाए और पर्यावरण सचिव के निर्देशाधीन ऐसे व्यक्ति / संस्था, जैसे उचित समझी जाए, की सहायता से समुचित कार्य–योजना तैयार करके उसका उपयोग पर्यावरण की बहाली के लिए किया जाए। तथापि, अवैध

खनन के कारण कारित क्षति की वसूली के लिए इस प्रस्ताव (अपरोच) के साथ परिकलित प्रतिकर की मात्रा को राज्य द्वारा प्रत्येक मामले के आधार पर, स्थल पर पर्यावरण को किए गए नुकसान का आकलन करके निर्धारित किया जाना है;

केन्द्रीय प्रदूषण नियंत्रण बोर्ड, पर्यावरण, वन और जलवायु परिवर्तन मन्त्रालय, भारत सरकार ने पत्र संख्या सी0पी0सी0बी0 / आई.पी.सी.–II / एन.जी.टी–ओ.ए.(360 / 2015) / 2021 / 2039, तारीख 11–06–2021 द्वारा माननीय राष्ट्रीय हरित अधिकरण के श्र्वोक्त निर्देशों के अनुपालना में और पर्यावरण संरक्षण अधिनियम, 1986 की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्य के समस्त जिलों में प्रतिकर के निर्धारण और वसूली के लिए समुचित तन्त्र विकसित करने हेतु तथा वसूले गए प्रतिकर का उपयोग एक समुचित कार्य–योजना तैयार करके पर्यावरण की बहाली करने हेतु राज्य सरकार को निर्देश दिया है।

अतः हिमाचल प्रदेश के राज्यपाल उपरोक्त प्रेक्षणों और तारीख 26–02–2021 द्वारा माननीय राष्ट्रीय हरित अधिकरण के आदेश के पैरा 25 में पारित निर्देशों के दृष्टिगत और पर्यावरण संरक्षण अधिनियम, 1986 की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्य के समस्त जिलों में प्रतिकर के निर्धारण और वसूली हेतु निम्न प्रकार से समुचित तन्त्र विकसित करते हैं:––

1. अवैध खनन को नियंत्रित करने, अपराधियों को दण्डित करने, अवैध खनन के निवारण हेतु योजनाएं बनाने तथा इस दिशा में कोई आगामी कदम उठाने का सम्पूर्ण दायित्व जिला प्रशासन में निहित होगा, जिसकी सहायता पुलिस अधीक्षक, जिला खनन अधिकारी, वन विभाग और विभागों / संस्थानों जैसे कि जल शक्ति विभाग, हिमाचल प्रदेश लोक निर्माण विभाग, हिमाचल प्रदेश राज्य औद्योगिक विकास निगम, उप–निदेशक उद्योग, खण्ड विकास अधिकारी और जिला स्तर पर कोई अन्य विभाग / कार्यालय / प्राधिकरण, जो जिला मैजिस्ट्रेट या उस द्वारा इस निमित्त प्राधिकृत किसी अन्य अधिकारी द्वारा उचित समझा जाए, द्वारा भी की जाएगी।

2. अवैध खननकर्ताओं या ऐसे किन्हीं अपराधियों जो अवैध खनन से सम्बन्धित किसी आदेश या विधान या नियम का उल्लंघन करते हैं पर्यावरण और पारिस्थितिकी को किए गए नुकसान की रकम और मात्रा को सुनिश्चित करने के आशय से उप–मण्डल मैजिस्ट्रेट के अधीन गठित समिति ऐसे व्यक्तियों के कृत्य द्वारा पर्यावरण को कारित नुकसान को रकम सुनिश्चित करेगी और उसकी वसूली करवाएगी।

3. उप–मण्डल मैजिस्ट्रेट पहले अवैध खनन कर्ताओं की पहचान सुनिश्चित करेगा और तत्पश्चात् प्रस्ताव–II (अपरोच–II) के अनुसार पर्यावरण और पारिस्थितिकी को किए गए नुकसान को परिकलित करने हेतु खनन अधिकारी, लोक निर्माण विभाग, खण्ड विकास अधिकारी, वन विभाग और पुलिस की सहायता लेगा जैसा कि उपर्युक्त नामित मामले में तारीख 26–02–2021 के अपने आदेश में माननीय राष्ट्रीय हरित अधिकरण द्वारा निर्देशित किया गया है। यानों के अन्य अभिग्रहण और निर्मुक्ति सहित प्रस्ताव–II (अप्रोच–II) स्पष्टता के लिए एनैक्चर–I में स्पष्ट किया गया है।

4. पारिस्थितिकी और पर्यावरण को किए गए नुकसान की वसूली के लिए पर्यावरणीय प्रतिकर को जमा करने हेतु अपराधियों को बुलाने का नोटिस उप–मण्डल मजिस्ट्रेट द्वारा अवैध खनन में अन्तर्वलित ऐसे व्यक्तियों को जारी किया जाएगा।

5. यदि अपराधी ऐसी रकम को जमा करने में असफल रहते हैं तो उप–मण्डल मैजिस्ट्रेट के पास सम्पत्ति को जब्त करने सहित ऐसे साधनों का प्रयोग करने या ऐसी रकम को भू–राजस्व के बकाया के रूप में घोषित करने की शक्ति है।

6. निदेशक, पर्यावरण, विज्ञान एवं प्रौद्योगिकी विभाग द्वारा एक राज्य स्तरीय नोडल लेखा खोला जाएगा, जिसे अवैध खनन क्रियाकलापों से प्रतिकर के रूप में वसूली गई रकम को जमा करने हेतु उपयोग किया जाएगा। निदेशक, पर्यावरण, विज्ञान एवं प्रौद्योगिकी ऐसे अभिकरणों, जैसे

उचित समझे जाए, की सहायता से ऐसे अवैध खनन क्रियाकलापों के परिणामस्वरूप पर्यावरण को हुए नुकसान की बहाली हेतु इस रकम का उपयोग करेगा केवल किसी विशिष्ट क्षेत्र / स्थल से वूसली गई रकम का केवल उसी क्षेत्र या उसके आस–पास के परिक्षेत्र, जिसमें सीधा पर्यावरणीय प्रभाव हो, में क्रियाकलापों की बहाली हेतु उपयोग किया जाएगा। इस प्रयोजन के लिए, बहाली की योजना उप–मण्डल मैजिस्ट्रेट द्वारा खण्ड विकास अधिकारी, लोक निर्माण विभाग, जल शक्ति विभाग, हिमाचल प्रदेश राज्य औद्योगिक विकास निगम, वन या किसी अन्य अभिकरण, जैसा उचित समझे, की सहायता से तैयार किया जाएगा। उसे वांछित रकम सहित निदेशक, पर्यावरण, विज्ञान एवं प्रौद्योगिकी को अनुमोदन हेतु प्रस्तुत किया जाएगा। रकम इस प्रकार संगृहित प्रतिकर से अधिक नहीं होगी। इन योजनाओं पर खर्च करने के पश्चात् निदेशक, पर्यावरण, विज्ञान एवं प्रौद्योगिकी के पास जो रकम बचती है, उसका उपयोग राज्य सरकार के परामर्श से राज्य के भीतर अन्य पारिस्थितिकी या पर्यावरण क्रियाकलापों पर किया जाएगा।

माननीय राष्ट्रीय हरित अधिकरण द्वारा पारित निदेशों की अनुपालना करने में असफल रहने की दशा में सम्बद्ध व्यक्ति / संस्था (एं) अननुपालन के लिए दायी होंगे।

आदेश द्वारा,

प्रबोध सक्सेना,
अतिरिक्त मुख्य सचिव (पर्यावरण, विज्ञान एवं प्रौद्योगिकी)।

———————————

ANNEXURE-I

Recovery of compensation and other penalties for release of vehicles/equipment as per Order passed by the Hon'ble National Green Tribunal in O.A No. 360/2015-NGT Bar Association *vs.* Verinder Singh dated 19-02-2020

The Hon'ble NGT considering the practical difficulty has modified its orders *vide* Order dated 19-02-2020 and has directed that the amount of compensation for the damage to the environment shall be charged as under:—

Sl. No.	Category of Vehicle	Penalty amount
1.	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.	4 lacs
2.	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old.	3 lacs
3.	For the remaining Vehicles older than 10 years/ equipments/excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.	2 lacs
Note-I.—On repetition of the offence by the same vehicle/equipment, Order dated 05-04-2019 will be applicable.		
Note.— The option of release may be available for a period of one month from the date of seizure and thereafter, the vehicles may be confiscated and auctioned.		

APPROACH-II is demonstrated by following formula as under:—

Till such time as data and information for a comprehensive NPV is worked out in a site specific manner to account for all (or at least the major) ecological damages, a simplified NPV, proxied on the market value of the illegally extracted amount may be computed. In this case the NPV approach would imply that the total benefits from the activity of sand mining (as represented by the market value of the extracted amount) be deducted from the total ecological costs imposed by the activity. In the absence of data on benefits and costs separately, we recommend a modification of the formula as shown below:

Total Benefits (B) = Market Value of illegal extraction: D
Total Ecological Costs = Market Value Adjusted for risk factor: D ✱RF

For present purposes, it is assumed that the benefits would accrue only in the first year (in which the extraction of the illegally mined material takes place), while the ecological costs would continue to be felt over a period of time. NPV is to be calculated for a period of 5 years on the net value, Σ (C-B), at a discount rate ranging from 8%-5%, varying in inverse with the risk factor. Thus, where the highest risk factor (say1) is applicable, the discount rate applicable would be the lowest (say 5% in this case)."

Table

Severity	**Mild**	**Moderate**	**Significant**	**Severe**
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount	8%	7%	6%	5%

Compensation Charge - explicit accounting of NPV

Market Value of Illegally Mined Material (D) 5000×400 = 2000000/-
Annual Value of Foregone Ecological Values *D*×*RF* = 2000000/-

- Present Value of Foregone Ecological Values (@ 5% discount rate and over 5 years)

$$PV = \sum_{t=1}^{5} \frac{(D+RT)}{(1+r)t}$$

= ∑(2000000) + (2000000) + (2000000) + (2000000)+ 2000000)
(1+0.05)1 (1+0.05)2 (1+0.05)3 (1+0.05)4 (1+0.05)5

= **Rs. 86, 58, 953/-**

- Net Present Value (after netting out market value of illegally mined material) - *i.e.*, Total Compensation to be levied

= NPV=PV-D
= **Rs. 66,58,953/-**
Compensation Charge in above case:

Approach-2
(explicit accounting of NPV) @ 5% discount rate and over 5 years **Rs. 66,58,953/-**

ILLUSTRATION NO. 1

Let us say that in Shimla district 50 tons of illegally mined material has been recovered by the concerned authority. The market value of the illegal mined material is determined by the Mining Wing, who shall ascertain the pith mouth value of the illegal mined material which is presumed to be Rs. 300. The market value of the illegal mined material for various categories shall also be determined by the Mining Officer(s). The variables in the illustration are assumed as per the inputs from the Mining Wing for enabling the application of the Approach-II. In this case the D (market value of illegal extraction) and the RF (risk factor) shall be determined by the Mining Officer who shall calculate the amount of compensation to be levied as follows:

D= market value of illegal mined mineral x illegal mined material

RT= D x Risk factor

r =discount.
t = time (*i.e* 5 years)
RF = risk factor determined by the table as Moderate *i.e* .50
Therefore, the r (discount) is 7% *.i.e.* 07
Illegal mined material =50 tons
Market value of illegal mined material = 300 per ton (pith mouth value which is to be determined by the mining wing)

(D+RT) = D x RF

$$PV = \sum_{t=1}^{5} \frac{(D+RT)}{(1+r)t}$$

(D+RT) = D x RF

D= **market value of illegal mined mineral x illegal mined material**

RF= Mild Moderate Significant Severe
.25 **.50** .75 1

(1+r) = 8% **7%** 6% 5% *(as per Table-2)*

Illegally mined material = 50 tons
Market value = Rs. 300 per ton (pit mouth value)

i.e D = **market value of illegal mined mineral x illegal mined material**

= 300 x 50 = Rs.15000
RF= risk factor adopted is Moderate

Annual value of forgone ecological values = D x RF (risk factor)
= 15000 x .50(moderate)
=Rs.7, 500.

Present value of forgone ecological value (PV) = 7% discount for moderate (r)

$$PV = \sum_{t=1}^{5} \frac{(D+RT)}{(1+r)t}$$

i.e $\frac{(7500)}{(1+.07)^1}$ = 7,009.34 (first year)

$\frac{(7500)}{(1.07)^2} = \frac{7500}{1.15}$ = 6,521.73 (second year)

$\frac{(7500)}{(1.07)^3} = \frac{7500}{1.22}$ = 6,147.54 (third year)

$\frac{(7500)}{(1.07)^4} = \frac{7500}{1.31}$ = 5,725.19 (fourth year)

$\frac{(7500)}{(1.07)^5} = \frac{7500}{1.40}$ = 5,357.14 (fifth year)

7,009.34 + 6,521.73 + 6,147.54 + 5,725.19 + 5,357.14 = 30,760.94

Rs. 30,760.94 to be recovered as compensation against illegal mining.

Note.—The quantity and value of illegally mined material used for Illustration-1 as above are hypothetical and are only used to bring clarity.

ILLUSTRATION NO. 2

Let us say that in Una district 70 tons of illegally mined material has been recovered by the concerned authority. The market value of the illegal mined material is determined by the Mining Wing, who shall ascertain the pith mouth value of the illegal mined material which is presumed to be Rs 400. The market value of the illegal mined material for various categories shall also be

determined by the Mining Officer. The variables in the illustration are assumed as per the inputs from the Mining Wing for enabling the application of the Approach-II. In this case the D (market value of illegal extraction) and the RF (risk factor) shall be determined by the Mining Officer who shall calculate the amount of compensation to be levied as follows:

D= market value of illegal mined mineral x illegal mined material

RT= D x Risk factor

r =discount

t = time (i.e 5 years)
RF = risk factor determined by the table as Severe i.e .1

Therefore, the r (discount) is 5% *.i.e.* 05
Illegal mined material =70 tons.
Market value of illegal mined material = 400 per ton (pith mouth value which is to be determined by the mining wing)

(D+RT) = D x RF

$$PV = \sum_{t=1}^{5} \frac{(D+RT)}{(1+r)t}$$

(D+RT) = D x RF

D= **market value of illegal mined mineral x illegal mined material**

RF=	Mild	Moderate	Significant	Severe
	.25	**.**50	.75	**1**

(1+r) = 8% 7% 6% **5%** *(as per Table-2)*

Illegally mined material = 70 tons
Market value = Rs. 400 per ton (pit mouth value)

i.e D = **market value of illegal mined mineral x illegal mined material**

= 400 x 70 = Rs. 28,000
RF= risk factor adopted is **Severe.**

Annual value of forgone ecological values = D x RF (risk factor)
= 28,000 x 1 (moderate)
=Rs 28,000

Present value of forgone ecological value (PV) = 5% discount for severe (r)

$$PV = \sum_{t=1}^{5} \frac{(D+RT)}{(1+r)t}$$

i.e $\frac{(28,000)}{(1+.05)^1} = 26666.66$ (first year)

$\frac{(28,000)}{(1+.05)^2} = \frac{28000}{(1.10)} = 25454.54$ (second year)

$\frac{(28000)}{(1.05)^3} = \frac{28000}{(1.16)} = 24,137.93$ (third year)

$\frac{(28000)}{(1.05)^4} = \frac{28000}{(1.22)} = 22,950.81$ (fourth year)

$\frac{(28000)}{(1.05)^5} = \frac{28000}{1.28} = 21,875.00$ (fifth year)

$26666.66^1 + 25454.54^2 + 24,137.93^3 + 22,950.81^4 + 21,875.00^5$ = Rs. 1, 21,084.94

Rs. 1, 21,084.94 to be recovered as compensation against illegal mining

Note:—The quantity and value of illegally mined material used for Illustration-2 as above are hypothetical and are only used to bring clarity.

ILLUSTRATION NO. 3

The SDM of the let`s say XYZ, Sub-Division area received information that about six persons with their equipment and vehicles are digging at point A, situated near river B. The SDM shall seek the assistance of the Police immediately and reach the site along with officer(s) of the Mining Department. He shall immediately identify the illegal miners with the help of the Police and confiscate their machinery. The machinery shall be kept in the custody of the local Thana. The videography of the spot be done alongwith the statements of Village Revenue Officer and responsible persons from the Panchayat or the *Lumberdar* be recorded.

The SDM shall get the damage caused to the ecology and environment assessed by the officers of the Mining Department who, if need be, shall be given assistance by the PWD, Forest Department, Block Development Officer (BDO), or the Revenue Officials.

For the purpose of the calculations of damage caused to the ecology and environment Approach-II shall be applied for which the Mining Officer or his representative shall be competent. Once calculations are done by the Mining Officer the same shall be conveyed to the offenders by way of notice, delivered as per routine practices of delivery of notices. A time period of 15 days shall be given to the offenders to deposit the Environment Compensation failing which the same shall be recovered by way of arrears of land revenue.

For the recovery of Environment Compensation the SDM may use other practices like cancellation of the Government contracts, blacklisting for future participation in tenders, etc. as per the content and situations. Only after the said Environment Compensation has been deposited, the vehicles and the machinery used in illegal mining shall be released.

[Authoritative English text of this Department Notification No. STE-E(5)-2/2021 dated 18-08-2022 as required under clause (3) of Article 348 of the Constitution of India].

ENVIRONMENT, SCIENCE & TECHNOLOGY DEPARTMENT

NOTIFICATION

Shimla-2, 18th August, 2022

No. STE-E(5)-2/2021.—WHER EAS, under Section 5 of the Environment Protection Act, 1986(Act No. 29 of 1986), the State Government is empowered to issue direction to implement the directions passed by the Hon'ble National Green Tribunal *vide* order dated 23-02-2021 passed in O.A No. 360/2015-NGT titled as National Green Tribunal, Bar Association *vs.* Verinder Singh for recovery of compensation on account of damage caused to the environment and ecology due to illegal mining;

WHEREAS, the Hon'ble NGT in Para 25 of its above Order dated 26-02-2021 has directed Central Pollution Control Board (CPCB) that the scale of compensation calculated with reference to Approach-II mentioned in the Expert Committee Report dated 30-01-2020 be adopted by all States/UTs and that the compensation be recovered in compliance to the said order and the recovered compensation may be kept in separate account and utilized for restoration of environment by preparing an appropriate action plan under the directions of Environment Secretary with the assistance of such individual institutions as may be considered necessary. However the quantum of compensation calculated with this approach for recovery of the loss caused due to illegal mining has to be determined by the State on case to case basis and by assessing the damage done to the environment at the site;

WHEREAS, the Central Pollution Control Board, Ministry of Environment, Forest and Climate Change, Government of India *vide* letter No. CPCB/IPC-II/NGT-O.A (360/2015)/ 2021/2039, dated 11-06-2021 has directed the State Govt., in compliance of the aforesaid directions of the Hon'ble NGT and in exercise of powers conferred by section 5 of the Environment Protection Act, 1986, to evolve an appropriate mechanism for assessment and recovery of compensation in all the Districts of the State and for utilization of the recovered compensation for restoration of environment by preparing an appropriate action plan.

AND NOW, THEREFORE, in view of above observations and the directions passed in para 25 of the Hon'ble NGT Order dated 26-02-2021 and in exercise of the powers conferred under section-5 of the Environmental Protection Act, 1986, the Governor of Himachal Pradesh is pleased to devise an appropriate mechanism for assessment and recovery of compensation in all Districts of the State as follows:—

1. The overall responsibility to check illegal mining, to punish the offenders, to draw plans for prevention of illegal mining and take any further steps in this direction shall vest with the District Administration, who shall be assisted by the Superintendent of Police, the District Mining Officer(s), the Forest Department and also the Departments-institutions like JSV, HPPWD, HPSIDC, Deputy Director Industries, the Block Development Officer(s) and any other Department/Office/Authority at the District level as deemed fit by the District Magistrate or any other officer authorized in this behalf by him.

2. In order to ascertain the amount and quantity of damage done to the environment and ecology by the illegal miners or any such offenders who are in violation of any order or

legislation or rule dealing with illegal mining, a Committee under the Sub-Divisional Magistrate shall ascertain the amount of damage caused to the environment by the act of such persons and cause the same to be recovered.

3. The Sub-Divisional Magistrate shall first ascertain the identity of illegal miners and then seek the assistance of Mining Officer, PWD, BDO, Forest Department and the Police to calculate the damage done to environment and ecology as per the Approach-II as directed by the Hon'ble NGT *vide* Order dated 26-02-2021 in the above tilted case. For the sake of clarity the Approach-II along with other seizures and release of vehicles is explained in **ANNEXURE-I**.

4. For the recovery of damage done to the ecology and environment, a notice of calling the perpetuators to deposit the environmental compensation shall be issued by the Sub-Divisional Magistrate to such persons involved in illegal mining.

5. If the perpetuators fail to deposit the said amount, the Sub-Divisional Magistrate has the power to use any means including attachment of property or declaration of such amount as arrears of land revenue.

6. A State level Nodal account shall be opened by the Director, Environment, Science & Technology Department which shall be used to deposit the amount recovered as compensation from the illegal mining activities. The Director, Environment, Science & Technology with the assistance of such Agencies as deemed fit shall utilize this amount for restoration of the damage caused to environment as a result of such illegal activities. The amount recovered from a particular area/site shall be used for restoration activities in that area only or in its immediate vicinity having direct environmental effect. For this purpose, the plan for restoration shall be got made by the Sub-Divisional Magistrate with the assistance of BDO, PWD, JSV, HPSIDC, Forest or any other Agency deemed fit. The same shall be submitted along with amount needed to the Director, Environment, Science & Technology for approval. The amount shall not exceed the compensation so collected. Whatever amount is left at the disposal of the Director, Environment S&T after spending on these plans shall be used for other ecological or conservation activities within the State in consultation with the State Government.

In the event of failure to comply with the directions passed by the Hon'ble NGT the concerned individual(s)/institution(s) shall be liable for non-compliance.

By order,

PRABODH SAXENA,
Addl. Chief Secretary (Env., S&T).

ANNEXURE-I

Recovery of compensation and other penalties for release of vehicles/equipment as per Order passed by the Hon'ble National Green Tribunal in O.A No. 360/2015-NGT Bar Association *vs.* Verinder Singh dated 19-02-2020

The Hon'ble NGT considering the practical difficulty has modified its orders *vide* Order dated 19-02-2020 and has directed that the amount of compensation for the damage to the environment shall be charged as under:—

Sl. No.	**Category of Vehicle**	**Penalty amount**
1.	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.	4 lacs
2.	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old.	3 lacs
3.	For the remaining Vehicles older than 10 years/ equipments/excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.	2 lacs
Note-I.—On repetition of the offence by the same vehicle/equipment, Order dated 05-04-2019 will be applicable.		
Note.— The option of release may be available for a period of one month from the date of seizure and thereafter, the vehicles may be confiscated and auctioned.		

APPROACH-II is demonstrated by following formula as under:—

Till such time as data and information for a comprehensive NPV is worked out in a site specific manner to account for all (or at least the major) ecological damages, a simplified NPV, proxied on the market value of the illegally extracted amount may be computed. In this case the NPV approach would imply that the total benefits from the activity of sand mining (as represented by the market value of the extracted amount) be deducted from the total ecological costs imposed by the activity. In the absence of data on benefits and costs separately, we recommend a modification of the formula as shown below:

Total Benefits (B) = Market Value of illegal extraction: D
Total Ecological Costs = Market Value Adjusted for risk factor: D *RF

For present purposes, it is assumed that the benefits would accrue only in the first year (in which the extraction of the illegally mined material takes place), while the ecological costs would continue to be felt over a period of time. NPV is to be calculated for a period of 5 years on the net value, Σ (C-B), at a discount rate ranging from 8%-5%, varying in inverse with the risk factor. Thus, where the highest risk factor (say1) is applicable, the discount rate applicable would be the lowest (say 5% in this case)."

Table				
Severity	**Mild**	**Moderate**	**Significant**	**Severe**
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount	8%	7%	6%	5%

Compensation Charge - explicit accounting of NPV

Market Value of Illegally Mined Material (D) 5000*400 = 2000000/-
Annual Value of Foregone Ecological Values *D*RF* = 2000000/-

- Present Value of Foregone Ecological Values (@ 5% discount rate and over 5 years)

$$PV = \sum_{t=1}^{5} \frac{(D+RT)}{(1+r)t}$$

= ∑(2000000) + (2000000) + (2000000) + (2000000)+ 2000000)
(1+0.05)1 (1+0.05)2 (1+0.05)3 (1+0.05)4 (1+0.05)5

= **Rs. 86, 58, 953/-**

- Net Present Value (after netting out market value of illegally mined material) - *i.e.*, Total Compensation to be levied

= NPV=PV-D
= **Rs. 66,58,953/-**
Compensation Charge in above case:

Approach-2
(explicit accounting of NPV) @ 5% discount rate and over 5 years **Rs. 66,58,953/-**

ILLUSTRATION NO. 1

Let us say that in Shimla district 50 tons of illegally mined material has been recovered by the concerned authority. The market value of the illegal mined material is determined by the

Mining Wing, who shall ascertain the pith mouth value of the illegal mined material which is presumed to be Rs. 300. The market value of the illegal mined material for various categories shall also be determined by the Mining Officer(s). The variables in the illustration are assumed as per the inputs from the Mining Wing for enabling the application of the Approach-II. In this case the D (market value of illegal extraction) and the RF (risk factor) shall be determined by the Mining Officer who shall calculate the amount of compensation to be levied as follows:

D= market value of illegal mined mineral x illegal mined material

RT= D x Risk factor

r =discount.
t = time (*i.e* 5 years)
RF = risk factor determined by the table as Moderate *i.e* .50
Therefore, the r (discount) is 7% *.i.e.* .07
Illegal mined material =50 tons
Market value of illegal mined material = 300 per ton (pith mouth value which is to be determined by the mining wing)

(D+RT) = D x RF

$$PV = \sum_{t=1}^{5} \frac{(D+RT)}{(1+r)t}$$

(D+RT) = D x RF

D= **market value of illegal mined mineral x illegal mined material .**

RF=	Mild	Moderate	Significant	Severe	
	.25	**.50**	.75	1	
	(1+r) = 8%	**7%**	6%	5%	*(as per Table-2)*

Illegally mined material = 50 tons
Market value = Rs. 300 per ton (pit mouth value)

i.e D = **market value of illegal mined mineral x illegal mined material**

= 300 x 50 = Rs.15000
RF= risk factor adopted is Moderate

Annual value of forgone ecological values = D x RF (risk factor)
= 15000 x .50(moderate)
=Rs.7, 500.

Present value of forgone ecological value (PV) = 7% discount for moderate (r)

$$PV = \sum_{t=1}^{5} \frac{(D+RT)}{(1+r)t}$$

i.e $\frac{(7500)}{(1+.07)^1} = 7{,}009.34$ (first year)

$\frac{(7500)}{(1.07)^2} = \frac{7500}{1.15} = 6,521.73$ (second year)

$\frac{(7500)}{(1.07)^3} = \frac{7500}{1.22} = 6,147.54$ (third year)

$\frac{(7500)}{(1.07)^4} = \frac{7500}{1.31} = 5,725.19$ (fourth year)

$\frac{(7500)}{(1.07)^5} = \frac{7500}{1.40} = 5,357.14$ (fifth year)

7,009.34 + 6,521.73 + 6,147.54 + 5,725.19 + 5,357.14 = 30,760.94

Rs. 30,760.94 to be recovered as compensation against illegal mining.

Note.—The quantity and value of illegally mined material used for Illustration-1 as above are hypothetical and are only used to bring clarity.

ILLUSTRATION NO. 2

Let us say that in Una district 70 tons of illegally mined material has been recovered by the concerned authority. The market value of the illegal mined material is determined by the Mining Wing, who shall ascertain the pith mouth value of the illegal mined material which is presumed to be Rs 400. The market value of the illegal mined material for various categories shall also be determined by the Mining Officer. The variables in the illustration are assumed as per the inputs from the Mining Wing for enabling the application of the Approach-II. In this case the D (market value of illegal extraction) and the RF (risk factor) shall be determined by the Mining Officer who shall calculate the amount of compensation to be levied as follows:

D= market value of illegal mined mineral x illegal mined material

RT= D x Risk factor

r =discount

t = time (i.e 5 years)
RF = risk factor determined by the table as Severe i.e .1

Therefore, the r (discount) is 5% *.i.e.* 05
Illegal mined material =70 tons.
Market value of illegal mined material = 400 per ton (pith mouth value which is to be determined by the mining wing)

(D+RT) = D x RF

$$PV = \sum_{t=1}^{5} \frac{(D+RT)}{(1+r)t}$$

(D+RT) = D x RF

D= **market value of illegal mined mineral x illegal mined material**

RF=	Mild	Moderate	Significant	Severe
	.25	.50	.75	**1**

(1+r) = 8% 7% 6% **5%** *(as per Table-2)*

Illegally mined material = 70 tons
Market value = Rs. 400 per ton (pit mouth value)

i.e D = **market value of illegal mined mineral x illegal mined material**

= 400 x 70 = Rs. 28,000
RF= risk factor adopted is **Severe.**

Annual value of forgone ecological values = D x RF (risk factor)
= 28,000 x 1 (moderate)
=Rs 28,000

Present value of forgone ecological value (PV) = 5% discount for severe (r)

$$PV = \sum_{t=1}^{5} \frac{(D+RT)}{(1+r)t}$$

i.e $\frac{(28,000)}{(1+.05)^1}$ = 26666.66 (first year)

$\frac{(28,000)}{(1+.05)^2}$ $\frac{=28000}{(1.10)}$ = 25454.54 (second year)

$\frac{(28000)}{(1.05)^3}$ $\frac{= 28000}{(1.16)}$ = 24,137.93 (third year)

$\frac{(28000)}{(1.05)^4}$ $\frac{= 28000}{(1.22)}$ =22,950.81 (fourth year)

$\frac{(28000)}{(1.05)^5}$ $\frac{= 28000}{1.28}$ =21,875.00 (fifth year)

26666.66^1 +25454.54^2+$24,137.93^3$+$22,950.81^4$+$21,875.00^5$ = Rs. 1, 21,084.94

Rs. 1, 21,084.94 to be recovered as compensation against illegal mining

Note:—The quantity and value of illegally mined material used for Illustration-2 as above are hypothetical and are only used to bring clarity.

ILLUSTRATION NO. 3

The SDM of the let`s say XYZ, Sub-Division area received information that about six persons with their equipment and vehicles are digging at point A, situated near river B. The SDM shall seek the assistance of the Police immediately and reach the site along with officer(s) of the Mining Department. He shall immediately identify the illegal miners with the help of the Police and confiscate their machinery. The machinery shall be kept in the custody of the local Thana. The videography of the spot be done alongwith the statements of Village Revenue Officer and responsible persons from the Panchayat or the *Lumberdar* be recorded.

The SDM shall get the damage caused to the ecology and environment assessed by the officers of the Mining Department who, if need be, shall be given assistance by the PWD, Forest Department, Block Development Officer (BDO), or the Revenue Officials.

For the purpose of the calculations of damage caused to the ecology and environment Approach-II shall be applied for which the Mining Officer or his representative shall be competent. Once calculations are done by the Mining Officer the same shall be conveyed to the offenders by way of notice, delivered as per routine practices of delivery of notices. A time period of 15 days shall be given to the offenders to deposit the Environment Compensation failing which the same shall be recovered by way of arrears of land revenue.

For the recovery of Environment Compensation the SDM may use other practices like cancellation of the Government contracts, blacklisting for future participation in tenders, etc. as per the content and situations. Only after the said Environment Compensation has been deposited, the vehicles and the machinery used in illegal mining shall be released.

AGRICULTURE DEPARTMENT

NOTIFICATION

Shimla-171002, the 23rd August, 2022

No. Agr.B-F(1)-4/2022.—The Governor, Himachal Pradesh is pleased to nominate the Agriculture Department as Nodal Department and Sh. Raghbir Singh, Joint Director (Agriculture) as Nodal Officer for coordinating & implementing the International Year of Millets (IYoM)- 2023. The detail of the Nodal Officer is as under:—

Designation	:	Joint Director (Agriculture), H.P.
E-mail	:	krishibhawan-hp@gov.in
Contact No.	:	0177-2830620, Mobile No. +9194181 21869

By order,
Sd/-
Secretary (Agr.).

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated: 08th August, 2022

No. HHC/Estt.3(410)/95-I.—06 days commuted leave with effect from 25-07-2022 to 30-07-2022 with permission to affix Sundays on 24th & 31st July, 2022 is hereby sanctioned, *ex-post-facto*, in favour of Shri Subhash Dhiman, Secretary of this Registry.

Certified that Shri Subhash Dhiman has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Subhash Dhiman would have continued to officiate the same post of Secretary but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated: 08th August, 2022

No. HHC/Admn.3(362)/92-I.—29 days leave *i.e.* 06 days commuted leave *w.e.f.* 02-07-2022 to 07-07-2022 and 23 days earned leave *w.e.f.* 08-07-2022 to 30-07-2022 with permission to suffix Sunday on 31-07-2022 is hereby sanctioned, *ex-post-facto*, in favour of Smt. Rachna Sood, Assistant Registrar of this Registry.

Certified that Smt. Rachna Sood has joined the same post and at the same station from where she had proceeded on leave after the expiry of the above leave period.

Certified that Smt. Rachna Sood would have continued to officiate the same post of Assistant Registrar but for her proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated: 02nd August, 2022

No. HHC/Estt.3(603)/2007.—22 days commuted leave *w.e.f.* 27-06-2022 to 18-07-2022 with permission to prefix Sunday on 26-06-2022 is hereby sanctioned, *ex-post-facto*, in favour of Shri Praveen Kaushal, Secretary of this Registry.

Certified that Shri Praveen Kaushal has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Praveen Kaushal would have continued to officiate the same post of Secretary but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated: 02nd August, 2022

No. HHC/ Admn.3(242)/86-I.—05 days commuted leave *w.e.f.* 30-05-2022 to 03-06-2022 with permission to prefix Sunday on 29-05-2022 is hereby sanctioned, *ex-post-facto*, in favour of Shri Hitesh Sharma, Court Master of this Registry.

Certified that Shri Hitesh Sharma has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Hitesh Sharma would have continued to officiate the same post of Court Master but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated: 02nd August, 2022

No. HHC/Estt.3(532)/2002-I.—28 days earned leave on and with effect from 04-05-2022 to 31-05-2022 with permission to prefix Gazetted holiday on 03-05-2022 is hereby sanctioned, *ex-post-facto*, in favour of Shri Subhash Kumar, Court Master of this Registry.

Certified that Shri Subhash Kumar has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Subhash Kumar would have continued to officiate the same post of Court Master but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated: 02nd August, 2022

No. HHC/Admn.3(487)/98.—36 days commuted leave *w.e.f.* 09-06-2022 to 14-07-2022 is hereby sanctioned, *ex-post-facto*, in favour of Smt. Poonam Mahajan, Registrar (Establishment) of this Registry.

Certified that Smt. Poonam Mahajan has joined the same post and at the same station from where she had proceeded on leave after the expiry of the above leave period.

Certified that Smt. Poonam Mahajan would have continued to officiate the same post of Registrar (Establishment) but for her proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated: 08th August, 2022

No. HHC/Estt.3(592)/2007.—04 days commuted leave *w.e.f.* 29-07-2022 to 01-08-2022 is hereby sanctioned, *ex-post-facto*, in favour of Shri Sanjeev Kumar Sethi, Court Master of this Registry.

Certified that Sh. Sanjeev Kumar Sethi has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Sh. Sanjeev Kumar Sethi would have continued to officiate the same post of Court Master but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated: 08th August, 2022

No. HHC/ Estt.3(507)/2000-I.—02 days commuted leave for 25-07-2022 and 26-07-2022 with permission to prefix Sunday on 24-07-2022 is hereby sanctioned, *ex-post-facto*, in favour of Shri Hemant Sharma, Assistant Registrar of this Registry.

Certified that Shri Hemant Sharma has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Hemant Sharma would have continued to officiate the same post of Assistant Registrar but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated: 12th August, 2022

No. HHC/Estt.3(678)/2009.—17 days commuted leave on and with effect from 18-07-2022 to 03-08-2022 with permission to prefix Sunday fell on 17-07-2022, is hereby sanctioned, *ex-post-facto*, in favour of Shri Laxman Sharma, Court Secretary of this Registry.

Certified that Shri Laxman Sharma has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Laxman Sharma would have continued to officiate the same post of Court Secretary but for his proceeding on leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 001

NOTIFICATION

Dated: 02nd August, 2022

No. HHC/Estt.3(1052/2020).—15 days commuted leave on and with effect from 13-07-2022 to 27-07-2022, is hereby sanctioned, *ex-post-facto*, in favour of Smt. Sheela Sood, Assistant Registrar of this Registry.

Certified that Smt. Sheela Sood has joined the same post and at the same station from where she had proceeded on leave after the expiry of the above leave period.

Certified that Smt. Sheela Sood would have continued to officiate the same post of Assistant Registrar but for her proceeding on leave.

By order,
Sd/-
Registrar General.

OFFICE OF THE EXECUTIVE OFFICER MUNICIPAL COUNCIL BILASPUR, DISTRICT BILASPUR (H.P.)

MUNICIPAL COUNCIL BILASPUR (PROPERTY TAXATION) BYE-LAWS-2022

NOTIFICATION

No. MCB/Property Tax/2022-2699 : *Bilaspur, the 06th August, 2022*

1. Short title and commencement.—(*i*) These Bye-laws may be called the Municipal Council Bilaspur (Property Taxation) Bye-laws-2022.

(*ii*) These bye-laws shall come into force from the date of their publication in the Rajpatra (e-gazette) Himachal Pradesh.

2. Definitions.—(*i*) In these bye-laws unless the context otherwise require:—**(*i*) 'Act'** means the Himachal Pradesh Municipal Act, 1994 (Act No. 13 of 1994) read with its amendments carried out *vide* H.P. Municipal (Amendment) Act, 2016 and *vide* H.P. Municipal (Amendment) Act, 2020.

(*ii*) 'Appellate Authority' means an authority prescribed under Section 90 of H.P. Municipal Act, 1994.

(*iii*) 'Assessment List' means the list of all units of the lands and Buildings assessable to property tax under the provisions of the H.P. Municipal Act, 1994.

(*iv*) 'Assessment year' means the year commencing from the first day of April to 31*st* day of March of succeeding year.

(*v*) 'Bye-laws' means the Municipal Council Bilaspur (Property Taxation) Bye-laws, 2022 made under the Act as notified in the official gazette.

(*vi*) 'Municipality' means as defined in Section 2(24)of the Act.

(*vii*) 'Section' means a Section of the Act.

(*viii*)'Ratable value' as defined in Section 2 clause (33-a) of the Act and procedure prescribed under these Bye-Laws.

(*ix*) 'Unit' means a specific portion of the land and Building in use and occupation of the owner(s) or occupier (s) including vacant land and built up portion of the building. This will not

include setbacks area of Building agricultural lands and land in notified green belt as notified under the Interim Development Plan of Bilaspur Planning Area.

(*x*) 'Unit area' means area of a unit in square meters.

(*xi*) 'Unit area tax' means property tax on unit(s) of lands & Buildings which shall be charged per annum between one percent to twenty five percent as may be determined on the basis of rat able value of unit(s) of lands & Buildings by the Municipality from time to time. All other words and expressions used herein but not defined shall have the same meaning respectively as assigned to them in the Act.

3. Assessment list what to contain.—The Executive Officer shall keep a book to be called the "Assessment List" in which the following shall be entered in **Form-A** appended to these Bye-laws:—

(*i*) A list of all units of the lands and Buildings located within the jurisdiction of Bilaspur Municipal Council, distinguishing each, either by name or number and containing such particulars regarding the location or nature of each, which shall be sufficient for identification thereof.

(*ii*) The ratable value of each unit of the lands and Buildings.

(*iii*) The name of the person primarily liable for payment of property tax and ratable value as well as property tax demand on his/her unit of land or Building.

(*iv*) If any such unit of a land or a Building is not liable to be assessed to the property tax, the reason for such non-liability; and

(*v*) Other details; if any, as the Executive Officer may from time to time think, fit.

Explanation.—(*i*) For the purpose of clause (b) the ratable value of unit (s) of land will be the ratable value of unit(s) of the land and in the case of unit(s) of the building, the ratable value will include the ratable value of the land and the unit(s) of the building erected thereon.

(*ii*) For the purpose of charging property tax on a unit of land, the unit of land shall be treated as "land" till the completion plan of building is sanctioned by Municipal Council Bilaspur or by other competent authority of the State Government and such construction is put to use on the spot whichever occurs first. Accordingly, property tax shall be continued to be charged on the ratable value of the unit of land till such time treating it as "land".

4. Form of Assessment list.—The assessment list shall be kept in the **form-A** hereto. The Executive Officer may order to add, omit, amend or alter any of the columns of the Proforma of the assessment list as and when required.

5. Procedure where name of person primarily liable for property tax cannot be ascertained.—If the name of the person primarily liable for the payment of property tax in respect of any unit of any land or Building cannot be ascertained, it shall be sufficient to designate him in the assessment list, property tax bill and in any notice which may be necessary to serve upon the said person under the Act, as "the holder" of such unit of land or Building without further description.

6. Inspection of assessment list.—If assessment list has been completed, the Executive Officer shall give public notice thereof mentioning therein the place where assessment list or copy

there of may be inspected and every person claiming to be the owner or lessee or occupier of any unit(s) of any land or building included in the assessment list and any authorized agent of such person shall be at liberty to inspect the list and to file written objection within 30 days from the date of publication of such public notice in the local newspaper (s).

7. Register of objections.—The Executive Officer shall keep a register of objections in which all objections received under sub-section (2) of Section 74 and sub-Section (2) of Section 76 shall be entered. The register shall contain:—

(*i*) The name or number of the land or Building in respect of which objection is received;

(*ii*) Name of the person primarily liable for the payment of property tax;

(*iii*) Name of the objector;

(*iv*) The ratable value finally fixed after enquiry and investigation of the objection by the Committee constituted in this behalf;

(*v*) The date from which the ratable value finally fixed has to come into force; and

(*vi*) Such other details as the Executive Officer may from time to time think fit.

8. Amendment of assessment list as per provisions of Section 76 and investigation and disposal of objections against such amendment.—(*i*) When any amendment is proposed to be made under the provisions of Section 76 such amendment will provisionally be made in the assessment list and the notice as required under sub section(1) & (3) of Section 76 shall be served on the person affected by the amendment after affording him the opportunity to file objection, if any, against the proposed amendment within 30 days from the date of receipt of such notice.

(*ii*) Objection shall be inquired into and investigated by the committee constituted in this behalf under Section 1 of 75 of the Act, after affording opportunity of being heard to the objector.

(*iii*) The assessment list shall be finally amended in accordance with the decisions made by the said committee.

(*iv*) If no objection is received or if the same are received but not within the time limit specified in this behalf in the notice, the assessment list shall be finally amended by confirming the provisional amendment made in the assessment list. However, for special reasons to be recorded in writing, the Committee constituted in this behalf may consider objections received after the expiry of the stipulated period.

(*v*) Property tax on the basis of the amended assessment list shall be due from the date specified in the assessment notice or from the date as may be decided by the Committee constituted in this behalf. Provided that the payment of property tax on the basis of the assessment list, as existing before such an amendment will not be withheld on the ground that some amendment is to be made in the list.

9. Payment of property taxes where to be made.—Every person who is liable to pay any of the property tax shall pay the same at the Head Office of the Municipal Council Bilaspur or at such other place(s) and time as may be specified by the Executive Officer as the case may be. However, the payment of tax shall be made either by cash or cheque or through Bank Draft drawn in favour of the Executive Officer, Municipal Council Bilaspur, payable at Bilaspur or through

RTGS in the Bank Account of Municipal Council Bilaspur declared for the said purpose by the Executive Officer as the case may be.

10. Demand of property tax to be raised annually by issuing one single bill for one unit of a property.—(*i*) Demand of property tax shall be raised annually by issuing a single property tax bill on **Form-B** annexed to these bye-laws for each unit of a property. The service of bill shall be effected by hand through special messenger and in case the owner or occupier avoids by hand service of the bill, service of the bill shall be effected by affixing the bill in presence of two witnesses on the unit of the property to which the bill relates.

(*ii*) In case the owner or occupier upon whom the property tax bill has been served, fails to make payment of the property tax within the due date, the property tax shall be recovered by the Executive Officer or by the officer/official authorized by him in this behalf by initiating appropriate process under the provision of Section 86 of the Act:

Providing that nothing herein contained shall affect the liability of such person to any increased property tax to which he may be assessed on account of the said unit of property owing to a revision of the ratable value.

(*iii*) The tax for the ensuring year shall be paid either in lump-sum within 30 days at the beginning of the financial year *i.e.* up to 30th April or in two half yearly installments. The first installment to be paid by 30th April and second installment by 30th October every year.

11. Service of property tax bills and demand notices in respect of un-partitioned unit of property.—If an un-partitioned unit of a property is owned by more than one person, service of bill(s) and notice(s) of demand on any one co-owner shall be treated as service on all the owners.

12. Demand and Collection.—(i) A register of demand and collection of property tax in **Form-F** appended to these bye-laws shall be maintained showing therein the figures of Property tax demand, collection, rebate, remission adjustment, arrears, excess recoveries and such other particulars in relation to each unit of the property. This register will be kept either in the shape of hard copy or in the shape of soft copy or in both as the Executive Officer may think fit.

(*ii*) The register may, if any, the Executive Officer as the case may be think fit be made in separate parts or volumes for such purpose and with such several designations as the Executive Officer, as the case may be determined.

(*iii*) The separate Register shall be maintained for recording information regarding detail of arrears for the previous years.

13. Circumstances not considered as vacancy of property.—For the purpose of Sections 81 and 84 of Himachal Pradesh Municipal Council Act, 1994:—

(*i*) A unit of building or of a tenement reserved by the owner for his own occupation shall be deemed to be occupied, whether it is actually occupied by the owner or not;

(*ii*) Any unit of building or of a tenement used or intended to be used for the purpose of any industry which is seasonal in character shall not be deemed to be vacant merely on an account of its being unoccupied and unproductive of rent during such period or periods of the year in which seasonal operations are normally suspended;

14. Remission/Refund not claimable unless notice of vacancy is given to the Executive Officer every year.—When a vacancy continues from one year into the following year, no refund or remission of any property tax shall be claimable from the Council on an account of such continued vacancy unless notice thereof is given to the Executive Officer within 60 days from the commencement of the next financial year.

15. Inspection by Municipal Staff of the vacant unit of the property.—If any owner or occupier does not allow or facilitate the inspection by the authorized Council staff of any unit of the property claimed by him to be vacant, the Executive Officer, as the case may be refuse to treat such unit of building or tenement, as the case may be, as vacant till the day such inspection is made, and the vacancy of the unit of property is verified.

16. Copies of property tax bill(s).—The Executive Officer, as the case may be, on a request in writing from the owner of any unit of land or Building or any other person primarily liable to pay property tax in respect thereof, give a copy or copies of any bill/bills for any property tax on payment of such fee as may be fixed by the Executive Officer, as the case may be, from time to time.

17. Notice of transfer of title.—The notice regarding transfer of title of any unit of any property require to be given under Section 83 shall be either in **Form-C or in Form-D** annexed to these bye-laws, as the case may be, and shall state clearly and correctly all the particulars required in the said Form(s).

18. Property tax to be paid up to date.—No such notice as contained in bye-laws 17 shall be deemed to be validly given unless the property tax due up to the date of transfer of title of the unit of property is paid in full.

19. Filling of return by owner(s) occupier(s).—The Executive Officer, as the case may be require any owner or occupier of a unit of land or building or of any portion thereof to furnish information or a written return in **Form-E** appended to these by-laws. Every owner or occupier on whom any such requisition is made shall be bound to comply with the same and to give true information or to make a true return to the best of his/her knowledge or belief, within a period of thirty days from the service of such requisition upon him/her.

20. Penalty for non-submission of return.—Whosoever omits to comply with any requisition under bye-laws 19 of these bye-laws or fails to give true information or to make a true return to the best of his/her knowledge or belief, shall in addition to any penalty under Section 82 of the Act, be precluded from objecting to any assessment made by the Executive Officer as the case may be in respect of such unit of the lands or Building of which he/she is the owner or occupier.

21. Inspection of tax record.—Every owner, lessee or occupier of a unit of land and building or authorized agent of any such person may, with the permission in writing of the Executive Officer or any officer/official authorized by him in this behalf inspect the tax record relating to the unit of the land/building of which is owner, lessee, agent or occupier free of charge during the office hours.

22. Location factor (F-1), characteristic and its value.— For the purpose of clause (33-a) (c) of Section 2 of the Act, the location Factor, Characteristic and its value shall be as under:—

Average Land Value of Bilaspur Town (2017-18)				
Sl. No.	**Category**	**Ward Number**	**Locality Name**	**Average Land Value (Un-cultivated) in Rs./sq. mtr.**
1.	A	5	Main Market	16,541
2.	B	6	Kosrian	12,282
3.	C	2, 3, 4, 8, 9 & 10	Roura, Diara & Dholra	8,531
4.	D	1, 7 & 11	Nihal, Changer & Lakhanpur	2,792

23. Structural factor (F-2), characteristics and its value.—For the purpose of clauses (33-a) (c) of Section 2 of the Act, building shall be classified as Pucca, Semi-Pucca and Kutcha in the following manner:—

Type of Construction		
Sl. No.	**Type of Construction**	**Structure Factor**
1.	Pucca (RCC Building)	1
2.	Semi Pucca	0.75
3.	Kachcha	0.5

24. Age Factor and Age-wise grouping and value of the building(F-3) For the purpose of clauses (33-a) (c) of Section 2 of the Act, all the buildings shall be grouped age-wise having factor value as mentioned against each age group as under:—

Age Factor		
Sl. No.	**Year of Construction**	**Age Factor**
1.	Before 1960	0.4
2.	1960-1969	0.5
3.	1970-1979	0.6
4.	1980-1989	0.7
5.	1990-1999	0.8
6.	2000-2009	0.9
7.	2010 Onwards	1

25. Occupancy factor, characteristics and its value(F-4).—The occupancy factor and its value shall be as under for the purpose of (c) *ibid*:—

Occupancy Status		
Sl. No.	**Occupancy Status**	**Occupancy Factor**
1.	Self-occupied	1
2.	Rented out	1.5

26. Use Factor/Characteristic and its value (F-5).—For the purpose of clauses (33-a) of Section 2 of the Act, the value of use factor/characteristic of the unit(s) of the lands & buildings for the purpose of Clause (33-a) *ibid* shall be as under:—

Use of Property		
Sl. No.	**Use of Property**	**Use Factor**
1.	Residential Purpose	1
2.	Non-residential purpose & utility	1
3.	Industry, entertainment and Clubs	1.5
4.	Restaurant, hotels upto 2 star rating	2
5.	3 star and above hotels, Towers and hoardings	5
6.	Tower =10,000/- and as per the monthly income 10% on the rent	Fixed

27. Method of calculation of ratable value and rate of property tax on the ratable value of the unit of lands and buildings.—Area (in sq. mtrs) of a unit multiplied by value of relevant factors of unit area method as mentioned above *vide* clause 22 to 26 of the bye laws. The figure that will so come out, thereof shall be the net ratable value of unit and property tax shall be charged on that net ratable is as under:—

Property Tax Rates MC Bilaspur				
Category	**Residential Property**	**Commercial Property**	**Rate on Industrial Property**	**Govt. Property**
A	6%	9%	8%	10%
B	6%	9%	8%	10%
C	6%	9%	8%	10%
D	6%	9%	8%	10%

28. Penalty.—If a person liable for payment of Property Tax does not pay the same with in a period of one month from the issue of tax bill, a person shall be liable for payment of interest as per section 86 & 87 of the Act beside initiation of recovery proceeding as per the provision of Section 89 of the Act. Further, whosoever contravenes any of the clauses of these Bye-Laws shall be, in addition to the penalties as provided under the act, liable for disconnection of water, electricity and other civic amenities and the Executive officer, as the case may be request the competent authority to withdraw registration/recognition, if any granted, in his/their favour.

29. Repeal and Savings.—The scheme, regulation or bye-laws, if any, hereto for relating to the mode of levy, calculation and assessment of property tax is hereby repealed. Anything done or any action taken under the said scheme, regulation or bye-laws if any shall be deemed to have been done or taken under the provisions of these bye-laws.

By order,
Sd/-
Executive Officer,
Municipal Council, Bilaspur.

Municipal Council Bilaspur

TAX DEPARTMENT ASSESSMENT LIST

FORM –A

(*See* Bye-Laws-4)

UPN-No_____ I.D. No._____ ZONE_____

Unit	Area	Net Ratable Value	Property Tax Percentage	Amount of General Tax
Residential				
Let Out Residential				
Commercial				
Plot of Land				

DATE OF ASSESSMENT

Sl. No.	Name of Property	Name of Owner	Name of Tenant or Occupier	Remarks

FORM-B

(*See* Bye-Laws-10)

Municipal Council Bilaspur
(Tax Department)
Property Tax Bill

Financial Year for the Year_____Bill No. _____ Dated _____

Zone_____ Bill(s) Detail

UPN No. _____
ID No. _____
Name of Property _____
Name of Owner/Occupier _____
Correspondence Address _____

Unit	Area	Net Ratable Value	Property Tax Percentage	Amount of General Tax
Residential				
Let Out Residential				
Commercial				
Plot of Land				

Detail of demand for Property Tax for the year _____Period _____

Sl. No.	Description of Tax	Amount
1.	General Tax	
2.	(*a*) Rebate @ 10% (*b*) Remission	
3.	Previous Arrear Amount for the period _____	
4.	Interest Amount	
5.	Previous Credit	
6.	Amount Payable on due date	
7.	Amount Payable after due date	
8.	Amount still at credit	

Bill Prepared By **Bill Checked By** **Assistant Tax Superintendent**

Receipt

UPN No. _____ ID No. _____ Name of Owner/Occupier _____	Bill No. _____ Bill Date _____ Amount before due date _____ Amount after due date _____ Amount Paid _____ Receipt No. _____ Dated _____

Cashier, Municipal Council Bilaspur

Terms & Conditions

1. The Municipality Treasury is open from 10.00 A.M. to 02.00 P.M. on all working days.

2. Cheques and Online payment should be drawn in MC account No. shown on property tax bill in favour of Executive Officer, as the case may be, Municipal Council Bilaspur.

3. Out stations cheques should be include the discount charged in such cheque(s).

5. Rebate @ 10% is given on the taxes claimed for the current year or a bill raised for the first time.

6. If the payment of the tax is not made within the financial year in which the bill is issued an interest @ 10% of the financial year to which the bill relates.

7. The notice of demand/recovery of property tax will not confer any right on the person paying the tax or anyone else to claim validation of unauthorized construction at a later date and the same is without any prejudice to the rights of the Municipal Council Bilaspur to take any legal action including that of demolition in respect of such unauthorized construction/structure.

8. In case any of your payments have not been adjusted, same can be adjusted/settled by producing original receipts given by Municipal Council Bilaspur.

9. In all correspondence, always mention No./date, name of house and demand No.

10. Bill generated be presented while tendering payment.

FORM-C

(*See* Bye-Law 17)

Form of notice of Transfer to be given which has taken place by way of instrument.

To

The Executive Officer/Secretary,
Municipal Council Bilaspur.....

I _____s/o _____r/o _____ hereby give notice as required by Section 83 of the H.P. Municipal Act, 1994 of the following transfer of property:—

Description of Property

Name & address of person whose title has been transferred	Name & address of person to whom property title has been transferred	Detail of Property	Area of the property	Account No./ID No. of old assessees	Remarks
1	2	3	4	5	6

Date _____

Name of Owner/Occupier _____
Address _____
_____
_____
Mob. No. _____

_____

FORM-D

(*See* Bye-Law-17)

Form of notice of Transfer to be given which has taken place otherwise than by instrument.

To

The Executive Officer,
Municipal Council Bilaspur

I _____s/o _____r/o _____ hereby give notice as required by section 83 of the H.P. Municipal Act, 1994 of the following transfer of property:—

Description of Property

Name & address of person whose title has been transferred	Name of legal heir/successor to whom property title has been transferred	Detail of Property	Area of the property	Account No./ID No. of old assessees	Remarks
1	2	3	4	5	

Date _____

Name of Owner/Occupier _____
Address _____
_____
_____
Mob. No. _____

_____

FORM-E

(*See* Bye-Law 19)

(Tax liability Form under Section 82 read with Section 86 of the Himachal Pradesh Municipal Act, 1994)

To

The Executive Officer,
Municipal Council Bilaspur.

Subject:— **Filling of return for assessment of properties for Municipal Taxes.**

Sir/Madam,

I am submitting the details of property known as ……. I.D. No …….. Ward No ……. Zone …… as under:—

Sl. No.	Unit	Area	Factors					Total ratable Value	Maintenance & Repair Rebate @10% under clause (33-a) of Section 2 of the H.P. Municipal Act, 1994.	Net ratable value	Remarks
			F1	F2	F3	F4	F5	F1 to F5 (Multiply)			
1.	(a) Residential										
	(b) Let out Residential										
2.	Non Residential/ Commercial										
	(a) Hotel above built up area of 2000 sq.m., MNC Show Rooms and Restaurants										
	(b) Hotel having built up area between 1000 to 2000 sq.m. and show room above 1000 sq. m.										
	(c) Other Hotels, Bars, Restaurant, Banks, ATMs, Show rooms, Call Centre, Marriage Hall, Travel Agency, Mobile Towers, Coaching Centre										

	(d) Shops, Schools, Colleges, Education institutions, Offices, Hostel, Hospital, Theatre, Clubs, Paying Guest House (PGs), Guest House.										
	(e) Godowns, Dhaba, Stall and Other Types of Properties not covered Under (a to d)										
3.	Plot of Land										

I hereby declare that the information furnished above is correct to the best of my knowledge and proper belief and nothing has been concealed therefrom.

Date …….

Yours faithfully,

(Signature)

Owner/Agent/Occupier.

Name in block letters ……..
Address ……
Mob. No. …….

Verification of the
Assistant Tax Superintendent

Verification of the
Executive Officer/Secretary

Location factor (F-1), characteristic and its value:—

Average Land Value of Bilaspur Town (2017-18)				
Sl. No.	**Category**	**Ward Number**	**Locality Name**	**Average Land Value (Un-cultivated) in Rs./sq. mtr.**
1.	A	5	Main Market	16,541
2.	B	6	Kosrian	12,282
3.	C	2, 3, 4, 8, 9 & 10	Roura, Diara & Dholra	8,531
4.	D	1, 7 & 11	Nihal, Changer & Lakhanpur	2,792

Structural factor (F-2), characteristics and its value:

Type of Construction		
Sl. No.	**Type of Construction**	**Structure Factor**
1.	Pucca (RCC Building)	1
2.	Semi Pucca	0.75
3.	Kachcha	0.5

Age Factor and Age-wise grouping and value of the building(F-3)

Age Factor		
Sl. No.	**Year of Construction**	**Age Factor**
1.	Before 1960	0.4
2.	1960-1969	0.5
3.	1970-1979	0.6
4.	1980-1989	0.7
5.	1990-1999	0.8
6.	2000-2009	0.9
7.	2010 Onwards	1

Occupancy factor, characteristics and its value(F-4):—

Occupancy Status		
Sl. No.	**Occupancy Status**	**Occupancy Factor**
1.	Self-occupied	1
2.	Rented out	1.5

Use Factor/ Characteristic and its value (F-5):—

Use of Property		
Sl. No.	**Use of Property**	**Use Factor**
1.	Residential Purpose	1
2.	Non-residential purpose & utility	1
3.	Industry, entertainment and Clubs	1.5
4.	Restaurant, hotels upto 2 star rating	2
5.	3 star and above hotels, Towers and hoardings	5
6.	Tower =10,000/- and as per the monthly income 10% on the rent.	

Method of calculation of ratable value and rate of property tax on the ratable value of the unit of lands and buildings:—

Area (in sq. mtrs) of a unit multiplied by value of relevant factors of unit area method as mentioned above *vide* clauses 23 to 27 of the bye laws. The fugure that will so come out, thereof shall be the net ratable value of unit and property tax shall be charged on that net ratable value is as under:—

Property Tax Rates MC Bilaspur (2017-18)				
Category	**House tax Rate on Residential Property**	**Property tax Rate on Commercial Property**	**Property tax Rate on Industrial Property**	**Property tax Rate on Govt. Property**
A	6%	9%	8%	10%
B	6%	9%	8%	10%
C	6%	9%	8%	10%
D	6%	9%	8%	10%

FORM-F

Municipal Council Bilaspur

(*See* Bye-Laws 12)

Demand and Collection Register

For the Financial Year _____

Unit	Area	Net Ratable Value	Property Tax Percentage	Amount of General Tax
Residential				
Let Out Residential				
Commercial				
Plot of Land				

General Tax	Rebate	Total General Tax	Previous Arrear Amount	Interest	Net Amount Payable	Bill No.	Date of issuing Bill	Current General Tax Collection	Rebate & Remission	Arrear Collection	Interest Collection	Receipt No.	Receipt Date	Current Balance Amount	Arrear Balance Amount	Credit	Remarks

_____

ब अदालत उप–मण्डल दण्डाधिकारी सदर, जिला बिलासपुर (हि0प्र0)

तारीख पेशी : 05–09–2022

ब मुकद्दमा : नीलम कुमारी पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) ..... प्रार्थिया।

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 के अन्तर्गत जन्म तिथि दर्ज करने बारा।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थिया नीलम कुमारी पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र दिया है कि उसकी जन्म तिथि संबन्धित ग्राम पंचायत के रिकार्ड में दर्ज नहीं है उसकी जन्म तिथि 22–09–1973 है। इसे दर्ज करने के आदेश किये जायें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थिया नीलम कुमारी पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत बामटा, जिला बिलासपुर के रिकार्ड में दर्ज करने के बारा कोई एतराज हो तो वह दिनांक 05–09–2022 को सुबह 11.30 बजे असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा नीलम कुमारी पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत बामटा, जिला बिलासपुर, हि0प्र0 के रिकार्ड में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 05–08–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

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ब अदालत उप–मण्डल दण्डाधिकारी सदर, जिला बिलासपुर (हि0प्र0)

तारीख पेशी : 05–09–2022

ब मुकद्दमा : श्रीमती रामकली पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) .. प्रार्थिया।

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 के अन्तर्गत जन्म तिथि दर्ज करने बारा।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थिया श्रीमती रामकली पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र दिया है कि उसकी जन्म तिथि संबन्धित ग्राम पंचायत के रिकार्ड में दर्ज नहीं है उसकी जन्म तिथि 23–03–1975 है। इसे दर्ज करने के आदेश किये जायें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थिया श्रीमती रामकली पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत बामटा, जिला बिलासपुर के रिकार्ड में दर्ज करने के बारा कोई एतराज

हो तो वह दिनांक 05–09–2022 को सुबह 11.30 बजे असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा श्रीमती रामकली पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत बामटा, जिला बिलासपुर, हि0 प्र0 के रिकार्ड में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 05–08–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

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ब अदालत उप–मण्डल दण्डाधिकारी सदर, जिला बिलासपुर (हि0प्र0)

तारीख पेशी : 05–09–2022

ब मुकद्दमा : श्रीमती पूजा देवी पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) प्रार्थिया।

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 के अन्तर्गत जन्म तिथि दर्ज करने बारा।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थिया श्रीमती पूजा देवी पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र दिया है कि उसकी जन्म तिथि संबन्धित ग्राम पंचायत के रिकार्ड में दर्ज नहीं है उसकी जन्म तिथि 05–03–1981 है। इसे दर्ज करने के आदेश किये जायें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थिया श्रीमती पूजा देवी पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत बामटा, जिला बिलासपुर के रिकार्ड में दर्ज करने के बारा कोई एतराज हो तो वह दिनांक 05–09–2022 को सुबह 11.30 बजे असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा श्रीमती पूजा देवी पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत बामटा, जिला बिलासपुर, हि0प्र0 के रिकार्ड में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 05–08–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

ब अदालत उप–मण्डल दण्डाधिकारी सदर, जिला बिलासपुर (हि0प्र0)

तारीख पेशी : 05–09–2022

ब मुकद्दमा : पूनम पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) ..... प्रार्थिया।

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 के अन्तर्गत जन्म तिथि दर्ज करने बारा।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थिया पूनम पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) ने इस अदालत में प्रार्थना–पत्र दिया है कि उसकी जन्म तिथि संबन्धित ग्राम पंचायत के रिकार्ड में दर्ज नहीं है उसकी जन्म तिथि 03–02–1980 है। इसे दर्ज करने के आदेश किये जायें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थिया पूनम पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत बामटा, जिला बिलासपुर के रिकार्ड में दर्ज करने के बारा कोई एतराज हो तो वह दिनांक 05–09–2022 को सुबह 11.30 बजे असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा पूनम पुत्री श्री रणजीत सिंह, निवासी गांव बैहल कंडेला, तहसील सदर, जिला बिलासपुर (हि0प्र0) की जन्म तिथि ग्राम पंचायत बामटा, जिला बिलासपुर, हि0प्र0 के रिकार्ड में दर्ज करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 05–08–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

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ब अदालत उप–मण्डल दण्डाधिकारी सदर, जिला बिलासपुर (हि0प्र0)

तारीख पेशी : 06–09–2022

ब मुकद्दमा : श्री अरूण कुमार पुत्र श्री हरि राम, निवासी गांव परोही, डा0 नोआ, तहसील सदर, जिला बिलासपुर (हि0प्र0)।

व

नेहा पुत्री श्री अजय चौधरी, निवासी गांव व डा0 नोआ, तहसील सदर, जिला बिलासपुर (हि0प्र0) ..... प्रार्थीगण।

बनाम

आम जनता

विषय.—प्रार्थना—पत्र बराये विवाह पंजीकरण करवाने बारे।

नोटिस बनाम आम जनता।

उपरोक्त मुकद्दमा उनवान वाला में प्रार्थी श्री अरूण कुमार पुत्र श्री हरि राम, निवासी गांव परोही, डा0 नोआ, तहसील सदर, जिला बिलासपुर (हि0प्र0) ने इस अदालत में संयुक्त तौर पर प्रार्थना—पत्र प्रस्तुत किया है जिसके अनुसार उन्होंने व्यक्त किया है कि नेहा पुत्री श्री अजय चौधरी, निवासी गांव व डा0 नोआ, तहसील सदर, जिला बिलासपुर (हि0प्र0) के साथ दिनांक 15—04—2022 को व्यवस्थित विवाह हिन्दू रीति रिवाजों के अनुसार किया है तथा इसकी प्रविष्टि समयबद्ध ग्राम पंचायत राजपुरा, विकास खण्ड सदर, जिला बिलासपुर (हि0 प्र0) के रिकार्ड में दर्ज नहीं है। अतः विलम्बित अवधि को मर्जित करके उक्त विवाह की प्रविष्टि हेतु सचिव, ग्राम पंचायत राजपुरा, जिला बिलासपुर (हि0प्र0) को निर्देश दिये जावें।

अतः आम जनता को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थीगण के विवाह की प्रविष्टि दिनांक 15—04—2022 को दर्ज करने बारा कोई एतराज हो तो वह दिनांक 06—09—2022 को सुबह 11.30 बजे असालतन या वकालतन इस कार्यालय में उपस्थित होवें। अन्यथा श्री अरूण कुमार पुत्र श्री हरि राम, निवासी गांव परोही, डा0 नोआ, तहसील सदर, जिला बिलासपुर (हि0प्र0) व नेहा पुत्री श्री अजय चौधरी, निवासी गांव व डा0 नोआ, तहसील सदर, जिला बिलासपुर (हि0प्र0) के विवाह की प्रविष्टि करने हेतु सचिव, ग्राम पंचायत राजपुरा, विकास खण्ड सदर, जिला बिलासपुर (हि0प्र0) को आदेश जारी कर दिये जायेंगे।

आज दिनांक 08—08—2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / —
उप—मण्डल दण्डाधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

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न्यायालय श्री रामेश्वर दास (हि.प्र.से.), उप—मण्डल दण्डाधिकारी एवं विशेष विवाह अधिकारी, सदर, उप—मण्डल सदर, जिला बिलासपुर (हि0प्र0)

1. श्री विनय शर्मा पुत्र श्री रामधन शर्मा, निवासी मकान नं0 264, हाउसिंग बोर्ड कोलोनी, सैक्टर 07 EXT गुड़गांव हरियाणा।

2. प्रेम लता पुत्री श्री जगत राम, निवासी गांव टाली, तहसील स्वारघाट, जिला बिलासपुर, हि0 प्र0 हाल C/o श्री रमेश कुमार नड्डा पुत्र श्री रूप लाल, निवासी मकान नं0 02 ए, डियारा सैक्टर, बिलासपुर (हि0प्र0)।

बनाम

आम जनता

विषय.—नोटिस विशेष विवाह अधिनियम, 1954 की धारा 5 (संशोधित अधिनियम, 1976) के अन्तर्गत विवाह पंजीकृत करने बारे।

इस अदालत में उपरोक्त प्रार्थीगण ने विशेष विवाह अधिनियम, 1954 के अन्तर्गत विवाह का पंजीकरण करने बारा दरख्वास्त मय ब्यान हल्फीया पेश किया है कि वह कानूनी तौर पर अपना विवाह विशेष विवाह अधिनियम के अन्तर्गत पंजीकृत करवाना चाहते हैं।

अतः सर्वसाधारण को इस नोटिस द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को विवाह पंजीकृत करने में आपत्ति / एतराज हो तो वह इस अदालत में असालतन / वकालतन हाजिर हो कर दिनांक 06–09–2022 तक पेश कर सकता है।

आज दिनांक 06–08–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ है।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी एवं विशेष विवाह अधिकारी,
सदर, जिला बिलासपुर (हि0 प्र0)।

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In the Court of Marriage Officer-cum-**Sub Divisional Magistrate, Nagrota Bagwan, District Kangra (H.P.)**

1. Sh. Kamaljeet Singh aged 36 years s/o Shri Sewa Singh, r/o V.P.O. Sihund, Tehsil Nagrota Bagwan, District Kangra (H.P.).

2. Upasana Singh aged 29 years d/o Sh. Babu Ram, r/o Singahi Kalan, Singhai Kheri, Uttar Pradesh-262 905.

Versus

General Public

Subject.— Notice for Registration of Marriage.

Applicants Sh. Kamaljeet Singh aged 36 years s/o Shri Sewa Singh, r/o V.P.O. Sihund, Tehsil Nagrota Bagwan, District Kangra (H.P.) & Upasana Singh aged 29 years d/o Sh. Babu Ram, r/o Singahi Kalan, Singhai Kheri, Uttar Pradesh has filed an application u/s 16 of Special Marriage Act, alongwith affidavit in the court of the undersigned in which they have stated that they have solemnized their marriage on 18-10-2021 at home V.P.O. Sihund, Tehsil Nagrota Bagwan as per Hindu rites and customs.

Therefore, the general public is hereby informed through this notice that if any person having any objection regarding this marriage, can file the objections personally or in writing before this court on or before 27-08-2022. The objection received after 27-08-2022, will not be entertained and marriage will be registered accordingly.

Issued today on 26-07-2022 under my hand and seal of the court.

Seal. Sd/-
Marriage Officer-cum-*Sub Divisional Magistrate,*
Nagrota Bagwan, District Kangra (H.P.).

ब अदालत श्री अनिल शर्मा, नायब तहसीलदार एवम् सहायक समाहर्ता द्वितीय श्रेणी, भवारना, जिला कांगड़ा (हि0 प्र0)

किस्म मुकद्दमाः दुरुस्ती नाम तारीख पेशी : 27–08–2022

मीरा देवी पुत्री राम सिंह, निवासी महाल गदयाडा, मौजा व उप–तहसील भवारना, जिला कांगड़ा (हि0 प्र0) .. प्रार्थिया।

बनाम

आम जनता .. प्रतिवादी।

विषय.––प्रार्थना–पत्र बराए नाम दुरुस्ती राजस्व अभिलेख महाल गदयाडा, मौजा व उप–तहसील भवारना, जिला कांगड़ा (हि0 प्र0)।

प्रार्थिया मीरा देवी पुत्री राम सिंह, निवासी महाल गदयाडा, मौजा व उप–तहसील भवारना, जिला कांगड़ा (हि0 प्र0) ने एक प्रार्थना–पत्र मय शपथ–पत्र पीठासीन अधिकारी के समक्ष प्रस्तुत करते हुए अनुरोध किया है कि उसका नाम आधार कार्ड, राशनकार्ड, शैक्षणिक अभिलेख व पंचायत अभिलेख में मीरा देवी पुत्री राम सिंह दर्ज है व उसका विख्यात व सही नाम भी यही है परन्तु राजस्व अभिलेख महाल गदयाडा, मौजा व उप–तहसील भवारना में उसका नाम मीरा देवी के बजाए पुष्पा देवी गलत दर्ज हो गया है। अतः अब प्रार्थिया अपने नाम की उपरोक्त महाल के राजस्व अभिलेख में दुरुस्ती करवा करके महाल गदयाडा, मौजा व उप–तहसील भवारना में पुष्पा देवी के बजाए पुष्पा देवी उपनाम मीरा देवी पुत्री राम सिंह दर्ज करवाना चाहती है। अतः प्रार्थिया का आवेदन स्वीकार करते हुए इस इश्तहार राजपत्र हि0प्र0 प्रकाशन के माध्यम से आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त प्रार्थिया के नाम की राजस्व अभिलेख महाल गदयाडा, मौजा व उप–तहसील भवारना, जिला कांगड़ा में दुरुस्ती करवा करके पुष्पा देवी उपनाम मीरा देवी पुत्री राम सिंह दर्ज करवाने बारे किसी किस्म की आपत्ति या उजर हो तो वह तारीख 27–08–2022 को असालतन या वकालतन हाजिर अदालत होकर अपना उजर पेश कर सकता है, बाद तारीख पेशी किसी किस्म का उजर एवं एतराज नहीं सुना जाएगा व नाम दुरुस्ती का आदेश पारित कर दिया जाएगा।

यह इश्तहार मुस्त्री मुनादी चस्पांगी आज दिनांक 20–07–2022 को मोहर अदालत व मेरे हस्ताक्षर से जारी हुआ।

मोहर। हस्ताक्षरित / –
नायब तहसीलदार एवं सहायक समाहर्ता, द्वितीय श्रेणी,
भवारना, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत श्री राजिन्द्र सिंह, सहायक समाहर्ता, द्वितीय श्रेणी एवं नायब तहसीलदार, हरिपुर, जिला कांगड़ा (हि0 प्र0)

मु0 नं0 : 35 / 22

अर्जुन चौधरी पुत्र रमेश चन्द, वासी महाल नन्दपुर, तहसील हरिपुर, जिला कांगड़ा (हि0प्र0)।

बनाम

आम जनता

विषय.—नाम दुरुस्ती।

अर्जुन चौधरी पुत्र रमेश चन्द, वासी महाल नन्दपुर, तहसील हरिपुर, जिला कांगड़ा (हि0प्र0) ने अदालत हजा में प्रार्थना—पत्र दायर किया है कि उसका नाम राजस्व रिकार्ड महाल नन्दपुर में अर्जुन सिंह पुत्र रमेश चन्द गलत इन्द्राज दर्ज है जबकि उसका सही नाम अर्जुन चौधरी पुत्र रमेश चन्द, वासी महाल नन्दपुर, तहसील हरिपुर, जिला कांगड़ा है। अतः नाम दुरुस्ती करने की प्रार्थना की है।

अतः इस इश्तहार राजपत्र / नोटिस द्वारा आम जनता तथा सम्बन्धित रिश्तेदारों को सूचित किया जाता है कि अर्जुन चौधरी पुत्र रमेश चन्द, वासी महाल नन्दपुर, तहसील हरिपुर, जिला कांगड़ा (हि0प्र0) का नाम राजस्व रिकार्ड महाल नन्दपुर में अर्जुन सिंह पुत्र रमेश चन्द की बजाय अर्जुन सिंह उपनाम अर्जुन चौधरी पुत्र रमेश चन्द, वासी महाल नन्दपुर, तहसील हरिपुर, जिला कांगड़ा (हि0प्र0) दुरुस्त करने बारे किसी को कोई एतराज अथवा आपत्ति हो तो वह दिनांक 29—08—2022 को प्रातः 10.00 बजे अदालत हजा में असालतन या वकालतन हाजिर होवें। अन्यथा एकतरफा कार्यवाही अम्ल में लाई जावेगी और नाम की दुरुस्ती के आदेश पारित कर दिए जायेंगे।

आज दिनांक 23—07—2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / —
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
हरिपुर, जिला कांगड़ा (हि0 प्र0)।

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**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, धीरा,
जिला कांगड़ा (हि0 प्र0)**

इश्तहार नं0 : 322 किस्म इन्तकाल : तकसीम हुक्मन तारीख पेशी : 29—08—2022

नाम फ्रीकेन जो वरवक्त तस्दीक इन्तकाल पेश न हो रहे हैं :—

1. राजिन्दर सिंह उपनाम राजिन्दर कुमार पुत्र मस्तो पुत्र चमारू, 2. निकू पुत्र किहरू पुत्र रामा, 3. राजमल पुत्र किहरू पुत्र रामा, 4. कालू पुत्र किहरू पुत्र रामा, 5. लाला पुत्र किहरू पुत्र रामा, 6. श्रीमती चम्पो पुत्री किहरू पुत्र रामा, 7. श्रीमती विजो पुत्री किहरू पुत्र रामा, 8. श्रीमती सुभाषना देवी पुत्री श्रवण पुत्र किहरू, 9. श्रीमती बिमला देवी पत्नी स्व0 श्री श्रवण पुत्र किहरू, 10. सुरिन्द्र कुमार पुत्र श्रीमती मंलका देवी पुत्री किहरू, 11. श्रीमती सरोज कुमारी पुत्री श्रीमती मंलका देवी पुत्री किहरू, 12. प्रशोत्तम दास पुत्र श्रीमती सौदां देवी पुत्री चमारू, 13. त्रिलोक चन्द पुत्र श्रीमती सौदां देवी पुत्री चमारू, 14. श्रीमती कौशल्या देवी पुत्री श्रीमती सौदां देवी पुत्री चमारू, 15. श्रीमती स्वर्णा देवी पुत्री श्रीमती सौदां देवी पुत्री चमारू, 16. श्रीमती पुतली देवी पुत्री श्रीमती सौदां देवी पुत्री चमारू, 17. श्रीमती चम्पा देवी पुत्री श्रीमती सौदां देवी पुत्री चमारू, 18. श्रीमती वीना देवी पुत्री श्रीमती सौदां देवी पुत्री चमारू, 19. श्रीमती पिंकी देवी पुत्री श्रीमती सौदां देवी पुत्री चमारू, 20. ओम प्रकाश पुत्र धन्ना पुत्र चमारू, 21. अशवनी कुमार पुत्र धन्ना पुत्र चमारू, 22. संजीव कुमार पुत्र धन्ना पुत्र चमारू, 23. श्रीमती रजनी देवी पुत्री धन्ना पुत्र चमारू, 24. श्रीमती माया देवी पत्नी स्व0 श्री धन्ना पुत्र चमारू समस्त वासी गांव भंगाली, मौजा रझूं, तहसील धीरा, जिला कांगड़ा (हि0प्र0)।

विषय.——उद्घघोषणा अधीन धारा 21(5) हि0 प्र0 भू—राजस्व अधिनियम, 1954.

मुताबिक रिपोर्ट पटवारी हल्का झरेट जगियां, तहसील धीरा, जिला कांगड़ा (हि0प्र0) से पाया गया कि तकसीम मुकद्दमा नं0 27 / 2016 तिथि फैसला 30—10—2020 ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, धीरा

शीर्षक चंगड, उपनाम रामधन पुत्र रसीला बनाम रमेश चन्द आदि से सम्बन्धित इन्तकाल नं0 322, तकसीम हुक्मन स्थित महाल भंगाली, मौजा रझूं, तहसील धीरा, जिला कांगड़ा (हि0प्र0) में दर्ज रजिस्टर है। उक्त इन्तकाल की तस्दीक के समय उपरोक्त भूमि मालिकान / फ्रीकैन क्रम संख्या 1 ता 24 को साधारण तरीके से विधिवत इतलाह होना सम्भव नहीं हो पा रही है और न ही वो साधारण इतलाह से वरवक्त तस्दीक हाजिर हो रहे हैं।

अतः उक्त 1 ता 24 भूमि मालकान / फ्रीकैन को इस उद्घघोषणा द्वारा सूचित किया जाता है कि वे दिनांक 29–08–2022 को प्रातः 10.00 बजे असालतन या वकालतन मुकाम पटवार कार्यालय झरेट जगियां, तहसील धीरा में हाजिर होकर अपना उजर / एतराज यदि कोई हो तो पेश कर सकते हैं, अन्यथा गैरहाजिर की सूरत में उक्त तकसीम हुक्मन के इन्तकाल का मिसल तकसीम हुक्मन मुकद्दमा नं0 27 / 2016 तिथि फैसला 30–10–2020 के अनुसार फैसला / मंजूर कर दिया जाएगा और बाद में किसी भी प्रकार का कोई भी उजर / एतराज मान्य नहीं होगा।

आज दिनांक 27–07–2022 को यह उद्घघोषणा मेरे हस्ताक्षर व मोहर अदालत सहित जारी हुई।

मोहर। हस्ताक्षरित / –
तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
धीरा, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0)

श्री मदन लाल सुपुत्र श्री सीता राम, गांव नागन, डाकघर खडानाल, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

बनाम

आम जनता

विषय : इश्तहार / मुस्त्री मुनादी राजस्व रिकार्ड में नाम दुरुस्ती बारे ।

श्री मदन लाल सुपुत्र श्री सीता राम, गांव नागन, डाकघर खडानाल, तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0) ने एक आवेदन–पत्र मय शपथ–पत्र इस आशय के साथ गुजारा है कि उसके पिता का नाम ग्राम पंचायत व अन्य दस्तावेजों में सीता राम उर्फ टीटा राम सुपुत्र चरागा राम दर्ज है जो उसके पिता का सही नाम है। परन्तु राजस्व रिकार्ड में गलती से सीता राम उर्फ टीटा राम के स्थान पर सीता राम उर्फ तोता राम ही दर्ज हुआ है। अब राजस्व रिकार्ड में सीता राम उर्फ टीटा राम दर्ज करवाना चाहता है।

अतः इस इश्तहार द्वारा सर्वसाधारण जनता व हितबद्ध व्यक्यिों को सूचित किया जाता है कि उक्त नाम को दुरुस्त करने बारे किसी भी व्यक्ति को कोई भी आपत्ति हो तो वह दिनांक 31–08–2022 या इससे पूर्व अधोहस्ताक्षरी के समक्ष असालतन या वकालतन उपस्थित होकर अपनी आपत्ति दर्ज कर सकता है। इसके पश्चात् कोई भी एतराज काबिले समायत नहीं होगा तथा आवेदन–पत्र पर नियमानुसार कार्यवाही अमल में लाई जाएगी।

आज दिनांक 27–07–2022 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता, द्वितीय श्रेणी,
तहसील बैजनाथ, जिला कांगड़ा (हि0 प्र0)।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, डाडा सीबा, जिला कांगड़ा (हि0 प्र0)

मु0 नं0 : 07 / 2022 तारीख पेशी : 30–08–2022

श्रीमती जगतम्बा शर्मा पत्नी श्री कुलदीप कुमार, गांव व डा0 चनौर, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0) ..प्रार्थिया।

बनाम

आम जनता ..प्रत्यार्थीगण।

उनवान मुकद्दमा.––प्रार्थना–पत्र बाबत विवाह पंजीकरण करवाने बारे।

श्रीमती जगतम्बा शर्मा पुत्री कृष्ण लाल गांव खांगटा, डा0 टिक्कर, तहसील रोहडू हाल पत्नी श्री कुलदीप कुमार शर्मा, गांव व डा0 चनौर, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0) ने इस आशय से न्यायालय में प्रार्थना–पत्र दिया है कि उसका विवाह श्री कुलदीप कुमार शर्मा पुत्र गांधी राम शर्मा से दिनांक 24–02–2012 को हिन्दू रिति रिवाज के साथ हुआ था जिसका पंजीकरण वह अज्ञानता के कारण निर्धारित अवधि के अन्दर ग्राम पंचायत चनौर में दर्ज न करवा सकी थी। अब प्रार्थिया ने अपने विवाह का पंजीकरण करवाने का अनुरोध किया है।

अतः इस इश्तहार मुश्त्री मुनादी / राजपत्र इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि उक्त विवाह पंजीकरण बारे कोई एतराज हो तो वह उक्त मुकद्दमा की पैरवी बारे दिनांक 30–08–2022 को प्रातः 10 बजे अदालत हजा में अथवा किसी अधिकृत एजैन्ट के माध्यम से या किसी अधिवक्ता के माध्यम से इस न्यायालय में उपस्थित आवें अन्यथा गैर हाजिरी की सूरत में विवाह पंजीकरण के आदेश पारित कर दिये जायेंगे। बाद तारीख पेशी कोई उजर या एतराज काबिले गौर न होगा।

आज दिनांक 23–07–2022 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, मझीण, जिला कांगड़ा (हि0 प्र0)

मिसल नं0 : 03/NT/2022 तारीख पेशी : 06–09–2022

श्रीमती आरती पत्नी श्री सुरिंदर कुमार, निवासी महाल जजवाड, डा0 लोअर घलोर, तहसील ज्वालामुखी, जिला कांगड़ा, हिमाचल प्रदेश ..प्रार्थिया।

बनाम

आम जनता

विषय.– नाम दुरुस्ती बावत राजस्व अभिलेख।

प्रार्थिया श्रीमती आरती पत्नी श्री सुरिंदर कुमार, निवासी महाल जजवाड, डा0 लोअर घलोर, तहसील ज्वालामुखी, जिला कांगड़ा, हिमाचल प्रदेश ने स्वयं उपस्थित होकर प्रार्थना–पत्र प्रस्तुत किया है कि उसका

नाम पटवार वृत्त डल के महाल सिद्धपुर, उप–तहसील मझीण, जिला कांगड़ा, हिमाचल प्रदेश के राजस्व अभिलेख में काजल दर्ज है। जबकि आधार कार्ड, परिवार रजिस्टर, विद्यालय त्याग प्रमाण–पत्र व अन्य सभी जगह में उसका नाम आरती दर्ज है। अतः राजस्व अभिलेख के पटवार वृत्त डल के महाल सिद्धपुर, मौजा मझीण, उप–तहसील मझीण में उसका नाम काजल पुत्री रमेश चन्द की बजाय काजल उपनाम आरती पुत्री रमेश चन्द दर्ज किया जाये। वास्तव में भिन्न–भिन्न दो नामों की वह एक ही महिला है।

अतः सर्वसाधारण को सुनवाई हेतु बजरिये इश्तहार व मुस्त्री मुनादी द्वारा सूचित किया जाता है कि इस सम्बन्ध में किसी प्रकार का उजर / एतराज हो तो वह दिनांक 06–09–2022 को प्रातः 10.00 बजे तक असालतन व वकालतन पेश होकर अपना एतराज दर्ज करवा सकता है। उसके उपरान्त कोई भी उजर या एतराज जेरे समायत न होगा और आरती पत्नी श्री सुरिंदर कुमार, निवासी महाल जजवाड, डा0 लोअर घलोर, तहसील ज्वालामुखी, जिला कांगड़ा, हिमाचल प्रदेश का नाम राजस्व अभिलेख के पटवार वृत्त डल के महाल सिद्धपुर में काजल पुत्री रमेश चन्द के बजाये काजल उपनाम आरती पुत्री रमेश चन्द दर्ज करने के आदेश पारित कर दिये जायेंगे।

आज दिनांक 27–07–2022 को मेरे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
मझीण, जिला कांगड़ा (हि0 प्र0)

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, मझीण, जिला कांगड़ा (हि0 प्र0)

मिसल नं0 : 04/NT/ 2022 तारीख पेशी : 06–09–2022

श्री अमर चन्द पुत्र श्री किरपा राम, निवासी महाल मरहाना, डा0 सियालकड, उप–तहसील मझीण, तहसील खुण्डियां, जिला कांगड़ा, हिमाचल प्रदेश ..प्रार्थी।

बनाम

आम जनता

विषय.– नाम दुरुस्ती बावत राजस्व अभिलेख।

प्रार्थी श्री अमर चन्द पुत्र श्री किरपा राम, निवासी महाल मरहाना, डा0 सियालकड, उप–तहसील मझीण, तहसील खुण्डियां, जिला कांगड़ा, हिमाचल प्रदेश ने स्वयं उपस्थित होकर प्रार्थना–पत्र प्रस्तुत किया है कि उसकी बहन सीमा कुमारी पुत्री किरपा राम का नीाम पटवार वृत्त सियालकड के महाल मरहाना, उप–तहसील मझीण, जिला कांगड़ा, हिमाचल प्रदेश के राजस्व अभिलेख में कान्ता देवी पुत्री किरपा राम दर्ज है। जबकि मृत्यु प्रमाण–पत्र व अन्य सभी दस्तावेजों में उसका नाम सीमा कुमारी दर्ज है। अतः राजस्व अभिलेख के पटवार वृत्त सियालकड के महाल मरहाना, उप–तहसील मझीण में उसका नाम कान्ता देवी के बजाए कान्ता देवी उपनाम सीमा कुमारी पुत्री किरपा राम दर्ज किया जाये। वास्तव में भिन्न–भिन्न दो नामों की वह एक ही महिला है।

अतः सर्वसाधारण को सुनवाई हेतु बजरिया इश्तहार व मुस्त्री मुनादी द्वारा सूचित किया जाता है कि इस सम्बन्ध में किसी प्रकार का उजर / एतराज हो तो वह दिनांक 06–09–2022 को प्रातः 10.00 बजे तक असालतन व वकालतन पेश होकर अपना एतराज दर्ज करवा सकता है। उसके उपरान्त कोई भी उजर या एतराज जेरे समायत न होगा और सीमा कुमारी पुत्री किरपा राम का नाम पटवार वृत्त सियालकड़ के महाल

मरहाना के राजस्व अभिलेख में कान्ता देवी के बजाये कान्ता देवी उपनाम सीमा कुमारी दर्ज करने के आदेश पारित कर दिये जायेंगे।

आज दिनांक 27–07–2022 को मेरे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
मझीण, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी (नायब तहसीलदार) उप–तहसील टापरी, जिला किन्नौर, हि0 प्र0

मुकद्दमा नं0 05 / 2022 तारीख संस्थापना 28–07–2022

श्री जय करण पुत्र श्री देवा कृष्ण, निवासी ग्राम चगांव, डा0 चगांव, उप–तहसील टापरी, जिला किन्नौर, हि0 प्र0।

बनाम

आम जनता

विषय.––प्रार्थना–पत्र दरख्वास्त अधीन धारा 13(3) जन्म एवं मृत्यु अधिनियम, 1969.

श्री जय करण पुत्र श्री देवा कृष्ण, निवासी ग्राम चगांव, डा0 चगांव, उप–तहसील टापरी, जिला किन्नौर, हि0 प्र0 ने इस अदालत में एक प्रार्थना–पत्र पेश किया है कि जिसमें प्रार्थी के पुत्र श्री कृष दामेस की जन्म तिथि 05–03–2009 है तथा जन्म तिथि पंचायत अभिलेख में दर्ज नहीं हुई है। जिसकी पुष्टि हेतु प्रार्थी ने शपथ–पत्र के साथ अन्य दस्तावेज प्रस्तुत किए हैं तथा पंचायत अभिलेख में जन्म तिथि दर्ज करने हेतु अनुरोध किया है।

अतः सर्वसाधारण को इस इश्तहार के माध्यम से सूचित किया जाता है कि यदि ग्राम पंचायत चगांव के रिकार्ड में जन्म तिथि दर्ज करने बारे किसी को उजर व एतराज हो तो वह दिनांक 28–08–2022 तक असालतन या वकालतन उपस्थित होकर अपना एतराज इस अदालत में पेश करें। यदि उक्त अवधि तक कोई उजर व एतराज पेश नहीं हुआ तो प्रार्थी के पुत्र कृष दामेस की जन्म तिथि 05–03–2009 को ग्राम पंचायत चगांव के अभिलेख में दर्ज करने के आदेश जारी किये जाएंगे।

आज दिनांक 27–07–2022 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
उप–तहसील टापरी, जिला किन्नौर, हि0 प्र0।

ब अदालत सहायक समाहर्ता (प्रथम श्रेणी) कल्पा, जिला किन्नौर, हि0 प्र0

मुकद्दमा नं0	तारीख रजुआ	तारीख फैसला
03 / 2021	31–08–2021	

1. श्री सूरज, आकाश पुत्रगण स्व0 शिव लाल, गांव पूर्वणी, तहसील कल्पा, जिला किन्नौर (हि0 प्र0),
2. श्री राज भगत पुत्र गोविन्द सैन, गांव पूर्वणी, तहसील कल्पा, जिला किन्नौर (हि0 प्र0)।

बनाम

1. श्री प्रेम सिंह व श्री जय बहादुर सिंह पुत्र मान सिंह, गांव पूर्वणी, तहसील कल्पा, जिला किन्नौर (हि0 प्र0)।
2. आम जनता उप–महाल पूर्वणी, तहसील कल्पा, जिला किन्नौर (हि0 प्र0)।

दरख्वास्त बाबत भूमि खाता खतौनी नं0 25 मिन / 40, खसरा नं0 11, रकबा तादादी 0–02–25 है0 उप–महाल रावा के खाना काश्त में दुरुस्ती करने बारे।

प्रार्थी श्री सूरज, आकाश पुत्रगण स्व0 शिव लाल व श्री राज भगत पुत्र गोविन्द सैन, गांव पूर्वणी, तहसील कल्पा, जिला किन्नौर (हि0 प्र0) ने इस अदालत में एक दरख्वास्त मय राजस्व अभिलेख / दस्तावेजों सहित आवेदन पत्र गुजार रखा है कि भूमि खाता खतौनी नं0 25 मिन / 40, खसरा नं0 11, रकबा तादादी 0–02–25 है0 उप–महाल रावा, तहसील कल्पा, जिला किन्नौर (हि0प्र0) के खाना काश्तकार में उनका काश्त व कब्जा है परन्तु राजस्व अभिलेख में श्री प्रेम सिंह व श्री जय बहादुर सिंह पुत्र मान सिंह का कब्जा दर्ज है जिसे दुरुस्ती कर काश्त व कब्जा स्वयं दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार के माध्यम से आम जनता महाल रादुले को सूचित किया जाता है कि भूमि खाता खतौनी नं0 25 मिन / 40, खसरा नं0 11, रकबा तादादी 0–02–25 है0 उप–महाल रावा, तहसील कल्पा, जिला किन्नौर (हि0प्र0) के खाना काश्त में कब्जा श्री प्रेम सिंह व श्री जय बहादुर सिंह पुत्र मान सिंह के स्थान पर काश्त कब्जा स्वयं श्री सूरज, आकाश पुत्रगण स्व0 शिव लाल व श्री राज भगत पुत्र गोविन्द सैन, गांव पूर्वणी, स्थानीय वासी दर्ज करने बारे किसी भी आम जनता को कोई उजर व एतराज हो तो वह दिनांक 28–08–2022 तक अपना एतराज इस अदालत में पेश कर सकता है। मियाद गुजरने आपत्ति अवधि कोई भी आपत्ति स्वीकार नहीं की जाएगी।

आज दिनांक 28–07–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी कल्पा,
जिला किन्नौर (हि0प्र0)।

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ब अदालत सहायक समाहर्ता (प्रथम श्रेणी) कल्पा, जिला किन्नौर, हि0 प्र0

मुकद्दमा नं0	तारीख रजुआ	तारीख फैसला
04 / 2021	31–08–2021	

1. श्री सूरज, आकाश पुत्रगण स्व0 शिव लाल, गांव पूर्वणी, तहसील कल्पा, जिला किन्नौर (हि0 प्र0),
2. श्री राज भगत पुत्र गोविन्द सैन, गांव पूर्वणी, तहसील कल्पा, जिला किन्नौर (हि0 प्र0)।

बनाम

1. श्री कमल कुमार, उदय कुमार, भूपेन्द्र सिंह, ललित मोहन, बृज मोहन पुत्रगण उदय चन्द एवं विशम्भर सिंह, गंगा सिंह पुत्र सनम गुर, गांव पूर्वणी, तहसील कल्पा, जिला किन्नौर (हि0 प्र0)।

2. आम जनता उप–महाल पूर्वणी, तहसील कल्पा, जिला किन्नौर (हि0 प्र0)।

दरख्वास्त बाबत भूमि खाता खतौनी नं0 25 मिन / 41, खसरा नं0 10, रकबा तादादी 0–02–85 है0 उप–महाल रावा के खाना काश्त में दुरुस्ती करने बारे।

प्रार्थी श्री सूरज, आकाश पुत्रगण स्व0 शिव लाल व श्री राज भगत पुत्र गोविन्द सैन, गांव पूर्वणी, तहसील कल्पा, जिला किन्नौर (हि0 प्र0) ने इस अदालत में एक दरख्वास्त मय राजस्व अभिलेख / दस्तावेजों सहित आवेदन पत्र गुजार रखा है कि भूमि खाता खतौनी नं0 25 मिन / 41, खसरा नं0 10, रकबा तादादी 0–02–85 है0 उप–महाल रावा, तहसील कल्पा, जिला किन्नौर (हि0प्र0) के खाना काश्तकार में उनका काश्त व कब्जा है परन्तु राजस्व अभिलेख में श्री कमल कुमार, उदय कुमार, भूपेन्द्र सिंह, ललित मोहन, बृज मोहन पुत्रगण उदय चन्द एवं विशम्भर सिंह, गंगा सिंह पुत्र सनम गुर का कब्जा दर्ज है जिसे दुरुस्ती कर काश्त व कब्जा स्वयं दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार के माध्यम से आम जनता महाल रादुले को सूचित किया जाता है कि भूमि खाता खतौनी नं0 25 मिन / 41, खसरा नं0 10, रकबा तादादी 0–02–85 है0 उप–महाल रावा, तहसील कल्पा, जिला किन्नौर (हि0प्र0) के खाना काश्त में कब्जा श्री कमल कुमार, उदय कुमार, भूपेन्द्र सिंह, ललित मोहन, बृज मोहन पुत्रगण उदय चन्द एवं विशम्भर सिंह, गंगा सिंह पुत्र सनम गुर के स्थान पर काश्त कब्जा स्वयं श्री सूरज, आकाश पुत्रगण स्व0 शिव लाल व श्री राज भगत पुत्र गोविन्द सैन, गांव पूर्वणी, स्थानीय वासी दर्ज करने बारे किसी भी आम जनता को कोई उजर व एतराज हो तो वह दिनांक 28–08–2022 तक अपना एतराज इस अदालत में पेश कर सकता है। मियाद गुजरने आपत्ति अवधि कोई भी आपत्ति स्वीकार नहीं की जाएगी।

आज दिनांक 28–07–2022 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी कल्पा,
जिला किन्नौर (हि0प्र0)।

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In the Court of Shri Nishant Kumar, Sub-Divisional Magistrate, Shimla (R), District Shimla (H. P.)

Smt. Sudha Devi w/o Sh. Arjun Dass, c/o Anant Sood, Village & P.O. Mashobra, Tehsil & District Shimla, Himachal Pradesh.

Versus

General Public . . *Respondent.*

Whereas Smt. Sudha Devi w/o Sh. Arjun Dass, c/o Anant Sood, Village & P.O. Mashobra, Tehsil & District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter date of birth of her daughter named—Km. Simran Shah d/o Sh. Arjun Dass, c/o Anant Sood, Village &

P.O. Mashobra, Tehsil & District Shimla, Himachal Pradesh in the record of Registrar, Birth and Death, Municipal Corporation.

Sl. No.	Name of the family member	Relation	Date of Birth
1.	Km. Simran Shah	Daughter	23-03-2007

Hence, this proclamation is issued to the general public if they have any objection/claim regarding to enter the name & date of birth of above named in the record of Registrar, Birth and Death, Municipal Corporation may file their claims/objections in the court on or before one month of publication of this notice in Govt. Gazette, failing which necessary orders will be passed.

Issued today on 06-08-2022 under my signature and seal of the court.

Seal. Sd/-

Sub-Divisional Magistrate,
Shimla (R), District Shimla (H.P.).

In the Court of Sh. Sunny Sharma H.A.S., Sub-Divisional Magistrate, Rohru, District Shimla, Himachal Pradesh

Case No. 02/2022

1. Sh. Lungrik Chonjor s/o Sh. Thokmek, r/o 16-1465, Kind STW Toronto, on M6K 1J4, Canada.

2. Smt. Passing Dolma d/o Sh. Hari Singh Negi, r/o Village Bautinala, P.O. & Tehsil Rohru, District Shimla (H.P.). ..*Applicant.*

Versus

General Public

Subject.-Registration of marriage under Special Marriage Act, 1954 (Central Act 43 of 1954).

Whereas the above named applicants have made an application of Special Marriage Act, 1954 (Central Act 43 of 1954) alongwith an affidavit stating therein that they have solemnized their mariage on 30-07-2022 at Village Bautinala, P.O. & Tehsil Rohru, District Shimla (H.P.) but this marriage has not been entered in the records of the Registrar of Marriages-*cum*-Panchayat Secy., Gram Panchayat Arhal, Dev. Block Rohru, District Shimla, Himachal Pradesh and whereas, the applicants have prayed for necessary order for the registration of their marriage.

Now, Therefore, objections are invited from the general public that if anyone has any objection regarding the registration of the marriage of the above named applicants, they should appear before the court of undersigned within 30 days from the publication of this notice, either

personally or through their authorized agent. In the event of their failure to do so, it would be deemed that their is no objection to the proposed registration of marriage and order shall be passed *ex-parte* for the registration of marriage without affording any further opportunity of being heard.

Issued under my hand and seal of the court on this 8th day of August, 2022.

Seal. Sd/-
Sub-Divisional Magistrate,
Rohru, District Shimla (H.P.).

ब अदालत श्री सनि शर्मा (हि0प्र0से0), उपमंडलीय दण्डाधिकारी, जुब्बल, जिला शिमला, हिमाचल प्रदेश

मिसल नं0 : 10 / 2022 तारीख पेशी : 10–09–2022

श्री विक्रम साही पुत्र स्व0 श्री खुम्ब साही, निवासी गांव धार / पौटा, डाकघर धार, ग्राम पंचायत धार, तहसील जुब्बल, जिला शिमला (हि0 प्र0) .. प्रार्थी।

बनाम

आम जनता .. प्रत्यार्थी।

विषय.––प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म तिथि पंजीकरण करने बारे।

प्रार्थी श्री विक्रम साही ने प्रार्थना–पत्र प्रस्तुत करते हुए निवेदन किया है कि उनका जन्म दिनांक 05–02–2002 को गांव धार / पौटा, डाकघर धार, ग्राम पंचायत धार, तहसील जुब्बल, जिला शिमला (हि0 प्र0) में हुआ है, लेकिन अज्ञानतावश उनकी जन्म तिथि को ग्राम पंचायत धार, तहसील जुब्बल, जिला शिमला (हि0 प्र0) के अभिलेख में पंजीकृत न करवाया जा सका है। उनकी जन्म तिथि को पंजीकृत करने के आदेश देने की अनुमति प्रदान करें।

अतः इस इश्तहार राजपत्र द्वारा सर्वसाधारण को सूचित किया जाता है कि उक्त प्रार्थी निवासी गांव धार / पौटा, डाकघर धार, ग्राम पंचायत धार, तहसील जुब्बल, जिला शिमला (हि0 प्र0) की जन्म तिथि 05–02–2002 को पंजीकृत करने बारे किसी व्यक्ति को कोई भी एतराज हो तो असालतन या वकालतन दिनांक 10–09–2022 को प्रातः 10 बजे अदालत हजा में हाजिर होकर अपना एतराज पेश कर सकता है। कोई एतराज पेश न होने की सूरत में जन्म तिथि को पंजीकृत करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 10–08–2022 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी हुआ।

मोहर। हस्ताक्षरित / –
उपमण्डलीय दण्डाधिकारी,
जुब्बल, जिला शिमला (हि0 प्र0)।

ब अदालत श्री जगपाल सिंह, कार्यकारी दण्डाधिकारी, नेरूवा, जिला शिमला, हिमाचल प्रदेश

श्री मोहम्मद युनस पुत्र नजीरोदीन, निवासी ग्राम किमाचन्द्रावली, डाकघर केदी, तहसील नेरूवा, जिला शिमला, हिमाचल प्रदेश। ...प्रार्थी।

बनाम

आम जनता ...प्रत्यार्थी।

विषय.––प्रार्थी की पुत्री का नाम व जन्म तिथि ग्राम पंचायत पौलीया के जन्म पंजीकरण रजिस्टर में दर्ज करवाए जाने बारे कि अधीन धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म पंजीकरण करने बारे।

प्रार्थी श्री मोहम्मद युनस पुत्र नजीरोदीन, निवासी ग्राम किमाचन्द्रावली, डाकघर केदी, तहसील नेरूवा ने अधोहस्ताक्षरी के न्यायालय में एक आवेदन–पत्र प्रस्तुत किया है कि उसने अपनी पुत्री का नाम व जन्म तिथि ग्राम पंचायत पौलीया के जन्म पंजीकरण रजिस्टर में दर्ज नहीं करवाया है, तथा प्रार्थी अब अपनी पुत्री का नाम व जन्म तिथि ग्राम पंचायत पौलीया के जन्म पंजीकरण रजिस्टर में निम्न प्रकार से दर्ज करवाना चाहता है।

क्रम संख्या	नाम	सम्बन्ध	जन्म तारीख
1.	शनेहा	पुत्री	02–02–2019

अतः आम जनता को बजरिया इश्तहार सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त जन्म पंजीकरण बारे कोई आपत्ति हो तो इस इश्तहार के प्रकाशन से 30 दिन के भीतर किसी भी कार्य दिवस पर प्रातः 10.00 बजे से सायं 5.00 बजे तक असालतन या वकालतन हाजिर अदालत आकर अपनी आपत्ति प्रस्तुत करें अन्यथा आवेदन–पत्र पर आवश्यक आदेश पारित करके ग्राम पंचायत पौलिया को आगामी कार्यान्वयन हेतु भेज दिया जायेगा।

आज तारीख 10–08–2022 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी किया गया।

हस्ताक्षरित / –

मोहर। (जगपाल सिंह),
कार्यकारी दण्डाधिकारी,
नेरूवा, जिला शिमला (हि0 प्र0)।

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ब अदालत श्री जगपाल सिंह, कार्यकारी दण्डाधिकारी, नेरूवा, जिला शिमला, हिमाचल प्रदेश

श्री नासीर अहमद पुत्र अब्दुल स्तार, निवासी ग्राम किमाचन्द्रावली, डाकघर केदी, तहसील नेरूवा, जिला शिमला, हिमाचल प्रदेश ...प्रार्थी।

बनाम

आम जनता ...प्रत्यार्थी।

विषय.––प्रार्थी के पुत्र का नाम व जन्म तिथि ग्राम पंचायत पौलीया के जन्म पंजीकरण रजिस्टर में दर्ज करवाए जाने बारे कि अधीन धारा 13(3) जन्म एवम् मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत जन्म पंजीकरण करने बारे।

प्रार्थी श्री नासीर अहमद पुत्र अब्दुल स्तार, निवासी ग्राम किमाचन्द्रावली, डाकघर केदी, तहसील नेरूवा, ने अधोहस्ताक्षरी के न्यायालय में एक आवेदन–पत्र प्रस्तुत किया है कि उसने अपने पुत्र का नाम व जन्म तिथि ग्राम पंचायत पौलीया के जन्म पंजीकरण रजिस्टर में दर्ज नहीं करवाया है तथा प्रार्थी अब अपने पुत्र का नाम व जन्म तिथि ग्राम पंचायत पौलीया के जन्म पंजीकरण रजिस्टर में निम्न प्रकार से दर्ज करवाना चाहता है।

क्रम संख्या	नाम	सम्बन्ध	जन्म तारीख
1.	अब्दूल हादी	पुत्र	12–10–2019

अतः आम जनता को बजरिया इश्तहार सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त जन्म पंजीकरण बारे कोई आपत्ति हो तो इस इश्तहार के प्रकाशन से 30 दिन के भीतर किसी भी कार्य दिवस पर प्रातः 10.00 बजे से सायं 5.00 बजे तक असालतन या वकालतन हाजिर अदालत आकर अपनी आपत्ति प्रस्तुत करें अन्यथा आवेदन–पत्र पर आवश्यक आदेश पारित करके ग्राम पंचायत पौलिया को आगामी कार्यान्वयन हेतु भेज दिया जायेगा।

आज तारीख 10–08–2022 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी किया गया।

हस्ताक्षरित / –
मोहर। (जगपाल सिंह),
कार्यकारी दण्डाधिकारी,
नेरूवा, जिला शिमला (हि0 प्र0)।

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FINANCE (PENSION) DEPARTMENT

OFFICE MEMORANDUM

Shimla-171002, the 24th August, 2022

***Subject.*— Revision of Pension of absorbee pensioners who had drawn lump-sum amount on permanent absorption in Public Sector undertakings & autonomous bodies and grant of family pension thereof.**

No. Fin. (Pen) B (10)-3/2018.—1. The undersigned is directed to say that the Government servants, who had drawn lump-sum payment in respect of *pro-rata* pension ($1/3^{rd}$ as well as $2/3^{rd}$) at the time of permanent absorption in the Public Sector Undertaking/Autonomous Bodies, were granted the benefit of restoration of full pension *vide* this department O.M. No. Fin(Pen)B(10)-3/2018 dated 04-07-2018. The full pension was allowed from prospective date *i.e.* from the date of publication of said instructions in the Gazette on 05-07-2018 or on completion of 20 years from the date of payment of 100% lump-sum amount (*i.e.* $1/3^{rd}$ as well as $2/3^{rd}$), whichever is later.

2. In para 7(a) of O.M. No. Fin(Pen)A(3)-1/2021-Part-II dated 25-02-2022, it had been stated that where Government servants have drawn one-time lump-sum terminal benefits equal to 100% of their pension and have become entitled to the restoration of one-third commuted portion of pension as per the instructions issued by this Department from time to time, their cases will not be covered by the said orders and orders for regulating pension of such pensioners were to be issued separately.

3. Accordingly, the matter with regard to revision of pension of Absorbee pensioners was examined in the Finance Department. Since, the Absorbee pensioners, who had drawn lump-sum payment in respect of *pro-rata* pension ($1/3^{rd}$ as well as $2/3^{rd}$) at the time of permanent absorption in the Public Sector Undertaking/Autonomous Bodies, have already been granted the benefit of restoration of full pension *vide* this department O.M. No. Fin(Pen)B(10)-3/2018 dated 04-07-2018, therefore, the Governor of Himachal Pradesh is pleased to decide that the pension of these Absorbee pensioners will be revised in accordance with the instructions contained in O.M. No. Fin (Pen)A(3)-1/2021-Part-II dated 25-02-2022 *w.e.f.* 05-07-2018 *i.e.* the date of publication of O.M. dated 04-07-2018 in the Gazette **or** on completion of 20 years from the date of payment of 100% lump-sum amount in lieu of pension, whichever, is later.

4. The Governor, Himachal Pradesh is further pleased to decide that family pension shall be paid to the eligible family member of the Government Absorbee on his/her demise, who was permanently absorbed in the Public Sector Undertakings/Autonomous Bodies on or before 14-05-2003 and had drawn 100% lump-sum payment in lieu of pension at the time of such permanent absorption, with the following conditions:—

(i) The family pension shall be paid in accordance with the CCS (Pension) Rules, 1972 to the eligible family member of the deceased Government Absorbee, who had drawn 100% lump-sum payment at the time of permanent absorption and whose full pension (*i.e.* $1/3^{rd}$ as well as $2/3^{rd}$) was restored in terms of O.M. No.Fin(Pen)B(10)-3/2018 dated 04-07-2018, published in the Government Gazette on 5th July, 2018.

(ii) The Family pension, in terms of para (i) above, shall be paid from the prospective date *i.e.* from the date of publication of these instructions in the Government Gazette.

(iii) In case, family member is already getting family pension from any other source, then in terms of rule 54 (13-B) of the CCS (Pension) Rules, 1972, the provision inserted, *vide* Govt. Notification No. Fin(Pen)A(3)-1/09 dated 19th February, 2014, he/she shall not be entitled to any family pension from the State Government under these orders.

By order,

PRABODH SAXENA, IAS,
Additional Chief Secretary (Finance).

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।